

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SMARTFLASH LLC and)
SMARTFLASH TECHNOLOGIES) DOCKET NO. 6:13cv447
LIMITED)

-vs-

) Tyler, Texas
) 12:58 p.m.
APPLE INC.) February 17, 2015

TRANSCRIPT OF TRIAL
AFTERNOON SESSION
BEFORE THE HONORABLE RODNEY GILSTRAP,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. BRADLEY W. CALDWELL
MR. JASON D. CASSADY
MR. JOHN AUSTIN CURRY
CALDWELL CASSADY & CURRY
2101 Cedar Springs Rd., Ste. 1000
Dallas, Texas 75201

MR. T. JOHN WARD, JR.
WARD & SMITH LAW FIRM
P.O. Box 1231
Longview, Texas 75606

1 FOR THE DEFENDANTS:

2

3 MR. JAMES R. BATCHELDER
4 ROPES & GRAY LLP
1900 University Ave., 6th Floor
East Palo Alto, California 94303-2284

5

6 MS. CHING-LEE FUKUDA
7 MR. KEVIN J. POST
ROPES & GRAY LLP
1211 Avenue of the Americas
8 New York, New York 10036-8704

9

10 MR. ERIC ALBRITTON
ALBRITTON LAW FIRM
11 P. O. Box 2649
Longview, Texas 75606

12

13

14

15

16 COURT REPORTERS: MS. SHELLY HOLMES, CSR, TCRR
OFFICIAL COURT REPORTER
shelly_holmes@txed.uscourts.gov

17

18 MS. SHEA SLOAN, CSR, RPR
OFFICIAL COURT REPORTER
shea_sloan@txed.uscourts.gov

19

20

21

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Ms. Mayes, if you'll bring in the jury, please.

COURT SECURITY OFFICER: All rise for the jury.

THE COURT: Counsel, you may return to the podium.

MS. FUKUDA: Thank you, Your Honor.

(Jury in.)

THE COURT: Please be seated.

Welcome back from lunch, Ladies and Gentlemen.

We'll continue with the cross-examination of the witness by the Defendant.

You may proceed, Counsel.

MS. FUKUDA: Thank you, Your Honor.

DR. MARK JONES, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

CROSS-EXAMINATION CONTINUED

BY MS. FUKUDA:

Q. (By Ms. Fukuda) Good afternoon, Dr. Jones.

A. Good afternoon.

Q. Before we broke for lunch, do you recall the series of questions you were being asked about Apple and Akamai?

A. Yes.

Q. And now, you had testified that you agreed that Apple -- Apple and Akamai are different companies, correct?

1 A. Yes.

2 Q. Earlier, during your direct, when Mr. Curry was asking
3 you questions, I believe that in doing your analysis for
4 Claim 13 of the '720 patent and Claim 32 of the '221 patent,
5 you had lumped Apple and Akamai together as the data
6 supplier; is that correct?

7 A. Yes.

8 Q. Now, Dr. Jones, you're not an expert in law?

9 A. That's correct.

10 Q. And you're not an expert at interpreting contracts?

11 A. That's correct.

12 Q. And did you review the contract between Apple and Akamai
13 in providing your analysis?

14 A. I believe I did, as well as other evidence provided by
15 Akamai.

16 Q. Do you recall that in that contract, it expressly stated
17 that the relationship of Akamai and Apple under the agreement
18 is that of independent contracting parties?

19 A. I don't recall the specific language, but that could be
20 there.

21 MS. FUKUDA: Could we pull up DX-APL 126 at Page 1,
22 please?

23 Q. (By Ms. Fukuda) Oh, I'm sorry, let's take a look at the
24 Page 1 first.

25 You see here that this is the contract between Apple and

1 Akamai. Did you review this?

2 A. At least a version of this, yes.

3 MS. FUKUDA: Okay. Let's turn to Page 54. And if
4 we could scroll down towards the bottom. Just one second.

5 Q. (By Ms. Fukuda) All right. If we take a look at the
6 right column in the middle, and you'll see here right there
7 the relationship of Akamai and Apple under the agreement is
8 that of independent contracting parties. You see that?

9 A. I do.

10 Q. And if you keep reading, it says: And nothing contained
11 in the agreement shall be construed to give either party the
12 power to direct and control the day-to-day activities of the
13 other.

14 You see that?

15 A. I do.

16 Q. Okay. Or, (ii), or deem the parties to be acting as
17 partners, joint venturers, co-owners, or otherwise as
18 participants in a joint undertaking.

19 Do you see that?

20 A. I do.

21 Q. Or, (iii), allow other party to create or assume any
22 obligation on behalf of the other party for any purpose
23 whatsoever.

24 Do you remember reviewing that language when you saw
25 this contract?

1 A. I don't remember one way or the other on that language.

2 Q. Okay. And you are not here to interpret for the rest of
3 us what the contractual obligations are between Apple and
4 Akamai, are you?

5 A. No, and that wouldn't have any bearing on my
6 infringement analysis with respect to identifying these as
7 the data supplier.

8 Q. And -- and you can't offer expert opinion on what
9 exactly Apple's role in terms of interacting with Akamai is
10 from a contractual basis, can you?

11 A. No.

12 Q. Dr. Jones, I have a couple of follow-up questions for
13 you. Do you remember we discussed access rules a little bit
14 earlier?

15 A. Yes.

16 Q. And I just want to clarify that your opinion regarding
17 Apple's infringement with respect to Claim 13 of the '720
18 patent and Claim 32 of the '221 patent is limited to the
19 functionality of movie purchases and rentals; is that right?

20 A. Yes.

21 Q. And, Dr. Jones, you also recall that we walked through
22 some steps of what happens when a user punches in the
23 password for the Apple ID, and then the DSID, GUID, and MID
24 is sent. Remember that?

25 A. Yes.

1 Q. And you testified this morning that when you send your
2 DSID, GUID, and MID to the Apple server, you're not paying
3 Apple; is that right?

4 A. I don't believe so, no.

5 Q. You did not testify to that?

6 A. I -- I don't recall saying that, no.

7 Q. So is it your opinion that Apple has been paid when its
8 server receives the DSID, GUID, and MID from a user?

9 A. Yes. If the payment is validated, the user has paid
10 Apple. There are still back-end transactions to be done,
11 just like with any other purchase.

12 Q. Again, Dr. Jones, the question is, is it your opinion
13 that when the user sends the DSID, GUID, and MID, to the
14 Apple server, at that moment Apple has been paid?

15 MR. CURRY: Your Honor, this is exactly what we
16 talked about right before lunch.

17 THE COURT: You're going to have to speak up,
18 counsel. I can't hear you.

19 MR. CURRY: Sorry. My objection is that this line
20 of questioning goes right to the topic we discussed right
21 before lunch. May we approach?

22 THE COURT: Approach the bench.
23 (Bench conference.)

24 MS. FUKUDA: Your Honor, he had --

25 THE COURT: Go ahead.

1 MS. FUKUDA: He had given some testimony about when
2 Apple has or hasn't been paid. I'm just clearing up where,
3 technically speaking, the payment has been made.

4 THE COURT: What's your objection, Mr. Curry?

5 MR. CURRY: My -- my objection is this is further
6 continuation of attacking the propriety of the claim
7 construction because the implication of this entire line of
8 questioning is that the Court's construction for payment data
9 requires that -- is something other than how the Court
10 construed it. The question that she asked is do the things
11 that you identified as payment data, is that paying Apple?

12 MS. FUKUDA: Your -- Your Honor, if I may, that's
13 not the point I'm making. It's because the witness had
14 testified and had led to -- created a certain impression that
15 Apple has already been paid when it receives those three IDs.
16 I just want to establish that either he believes that's true
17 or that it isn't true.

18 MR. CURRY: My -- my -- this is exactly my point.
19 If we follow Your Honor's claim construction, this question
20 has no relevance. It's entirely prejudicial for Ms. Fukuda
21 to suggest that something is required other than the express
22 construction that the Court gave.

23 THE COURT: It seems to me that this has been asked
24 and answered already. Did we not already cover this ground?

25 MS. FUKUDA: Not the clarifying question. And,

1 Your Honor, the reason is that in the term -- in the claims,
2 there's a requirement not just for payment data, but also for
3 payment. So it is important to draw a distinction between
4 payment data and payment. And I merely wanted to clarify
5 that his -- when he says payment, that he's not lumping it
6 together with payment data.

7 THE COURT: All right. I'm going to overrule the
8 objection. But I remind you of my instructions in chambers.

9 MR. CURRY: Thank you, Your Honor.

10 MS. FUKUDA: Thank you.

11 THE COURT: To the extent this has been covered, we
12 need to move on.

13 MS. FUKUDA: Thank you.

14 MR. CURRY: Thank you, Your Honor.

15 THE COURT: All right.

16 (Bench conference concluded.)

17 THE COURT: All right. Objection is overruled.

18 Let's continue.

19 Q. (By Ms. Fukuda) Dr. Jones, is it your opinion that
20 Apple has been paid when its server -- at the moment that its
21 server receives the DSID, the GUID, and the MID from the
22 user?

23 A. Not right at that moment, no.

24 Q. Thank you.

25 Dr. Jones, at the very end of your examination by Mr.

1 Curry, you gave a series of opinions regarding what's called
2 non-infringing alternatives. You recall that?

3 A. Yes.

4 Q. And you testified that it was your understanding that
5 the non-infringing alternatives that you came up with are
6 relevant for damages calculation, correct?

7 A. Yes. Specifically for the survey that was conducted.

8 Q. Okay. And you understand that Apple did not supply
9 separate so-called non-infringing alternatives, correct?

10 A. Yes.

11 Q. And you do understand that just because Apple didn't
12 supply what's called non-infringing alternatives for damages
13 purposes, that has nothing to do whether -- with whether
14 Apple is conceding that there's infringement or no
15 infringement, correct?

16 A. I'm not sure I understood exactly what you were asking
17 me.

18 Q. Let me put it this way: The fact that Apple did not put
19 forward non-infringing alternatives for damages purposes does
20 not mean that Apple hasn't said, no, we don't infringe in
21 this case?

22 A. That's correct.

23 Q. And, in fact, it is your understanding that Apple --
24 Apple's position is that it does not infringe?

25 A. That's correct.

1 Q. And, in fact, there will be other experts who will be
2 testifying here that would not agree with your conclusion.

3 You understand that?

4 A. That's my understanding.

5 Q. Okay. Thank you.

6 So you do understand that this non-infringing
7 alternative is really your opinion; that your opinion -- even
8 under your opinion, if Apple did these things, you would
9 conclude there's no infringement.

10 A. With respect to the alternatives identified, yes, I
11 think I identified the non-infringing alternative for the
12 '720. It does not avoid infringement of the '772.

13 Q. And you came up with different alternatives for the '772
14 that even, in your opinion, you would say that's not
15 infringing, right?

16 A. That's correct.

17 Q. Okay. Now, you characterized these alternatives to be
18 Apple's best alternatives for its current design, correct?

19 A. Yes.

20 Q. So you agree that there may be multiple alternatives for
21 each of the asserted claims?

22 A. Yes. In fact, I identified multiple alternatives.

23 Q. What I mean is, for any particular asserted claim, you
24 agree that there could be multiple alternatives that even, in
25 your opinion, is not covered by that claim, right?

1 A. Yes.

2 Q. And you identified one of them as what you called the
3 best.

4 A. I believe I identified two in some cases.

5 Q. Oh, okay. That would cover any one single claim,
6 correct?

7 A. I believe so, yes.

8 Q. Okay. And by best, would you agree that you believe
9 that your alternative is one that would provide Apple and its
10 customers with as much benefit as possible?

11 A. That's certainly my intention, yes.

12 Q. And you also agree that, generally, the fewer steps
13 that's required by the alternative, the more seamless the
14 transaction would be and the most desirable to the user?

15 A. At a high level, yes. It would depend on the particular
16 alternative. I would have to examine that. But as a general
17 principle, yes, but it's not always true.

18 Q. Okay. Now, you provided what you thought were Apple's
19 best alternatives to -- you testified -- Dr. Wecker and Mr.
20 Mills?

21 A. Yes.

22 Q. And Dr. Wecker and Mr. Mills are also experts hired by
23 Smartflash to analyze Smartflash's damages?

24 A. Yes.

25 Q. And that's under the assumption that there is

1 infringement found and that the patents are found to be
2 valid, right?

3 A. Yes.

4 Q. And that's just an assumption.

5 A. Well, it's my opinion. It's an assumption that all the
6 damages experts make.

7 Q. But Apple disagrees, and they will have a chance to put
8 up their testimony -- their evidence later, correct?

9 A. Yes, they will.

10 Q. Okay. Now, you understand that Dr. Wecker and Mr. Mills
11 will be relying on your alternatives when they come up with
12 the damages numbers in this case.

13 A. Yes.

14 Q. And you understood that Dr. Wecker would be running
15 consumer surveys based on your alternatives, correct?

16 A. Yes.

17 Q. And you understand that Mr. Mills will be relying on Dr.
18 Wecker's surveys that are based on your alternatives, to
19 generate Smartflash's damages number for this case, correct?

20 A. At least in part, that's my understanding.

21 Q. Now, you agree -- would you agree that if you didn't
22 select the best alternative, then Dr. Wecker's and Mr. Mills'
23 reliance on your alternatives would also be faulty?

24 A. It could be the case. I would have to look at it, but
25 I'm not aware of any situation which that's the case.

1 Q. Because you believe you've identified the best
2 alternative?

3 A. Yes.

4 Q. Now, you're not an expert in consumer surveys, correct?

5 A. That's correct.

6 Q. And you're not an expert in drafting survey questions?

7 A. No. I've done it, but I'm not an expert in it.

8 Q. And you're not an expert in drafting questions for a
9 survey-taker to decide whether or not they're motivated to
10 buy something?

11 A. That's correct.

12 Q. In fact, this was the first instance where you were
13 working on a survey in a litigation context?

14 A. It may have been, yes.

15 Q. And this was the first survey in which you were dealing
16 with specific consumer products?

17 A. That may be the case, yes.

18 Q. Now, Dr. Jones, you agree that all four of the asserted
19 claims have this following code element, code responsive to
20 the payment validation data to retrieve data from the data
21 supplier.

22 MS. FUKUDA: And to make it easier on you -- it's
23 not a memory test -- I will have Mr. Lee pull up a slide that
24 puts them next to each other.

25 There we go.

1 Q. (By Ms. Fukuda) We've blown up that particular code
2 element that I had asked about.

3 Do you see them?

4 A. I do.

5 Q. And you agree that these four code elements, each
6 existing in the respective asserted claims, require code
7 responsive to payment validation data to retrieve data from
8 the data supplier, correct?

9 A. Yes.

10 Q. And you understand that the payment validation data is
11 only obtained after payment data is sent, right?

12 A. That's correct.

13 Q. And you would agree that in a system in which payment is
14 occurring after a user already downloaded the content from
15 the supplier, that system would not infringe these claims?

16 A. I would have to know more about the situation to
17 understand it better before I would say it wouldn't infringe
18 it.

19 Q. Well, in the -- in the example of purchasing an app from
20 the App Store, for example, if a user downloads the app first
21 and then sends the DSID, GUID, and MID, which you call
22 payment data, in that particular situation, there would not
23 be infringement, would you agree?

24 A. If there's no payment data that was sent according to
25 the claims, then I would agree there's no infringement.

1 Q. Okay. Now, this particular claim element here requires
2 that in order -- before you can get that content from the
3 data supplier, whether it be an app or a movie or a song,
4 that you -- the -- your user device must have code -- must
5 first receive pay --

6 Let me rephrase that question.

7 By this element, in all four of these claims, you would
8 agree that before the user can retrieve content from the data
9 supplier, including apps, that they would first have to send
10 payment data and then receive payment validation data back,
11 agreed?

12 A. Yes. I believe that's what the claims require.

13 Q. Okay. And in your analysis of infringement, you claim
14 that the DSID, the MID, and the GUID is the payment data,
15 correct?

16 A. Yes.

17 Q. And you say that that's the payment data that's sent to
18 Apple's server, and in response, you -- your opinion is that
19 payment validation data is sent back to the user, correct?

20 A. Yes.

21 Q. And then at that point, the user can retrieve the
22 content?

23 A. Well, the system can retrieve the content.

24 Q. The system can retrieve the content.

25 So what about in this scenario? I'm the user. I have

1 an iPhone. I browse for content, and I select something I
2 want to buy. Let's say it's an app or a movie or a song, and
3 I select it.

4 That content is immediately downloaded to my phone
5 without me require -- without requiring me to punch in my
6 Apple ID, my password, or anything of the kind. It just
7 downloads to my phone.

8 Are you with me so far?

9 A. Yes.

10 Q. Okay. But before I use that content, before I play it,
11 before I access it, I'm prompted to enter my password for my
12 Apple ID, just the way you demonstrated it before. Remember
13 when you purchased that movie, you had downloaded it -- I'm
14 sorry. You had punched in your Apple ID password, and then
15 you got the content?

16 A. Yes.

17 Q. Except now I'm reversing it. Now you select the
18 content. It comes down to your phone. And when I want to
19 access it, now I'm prompted to punch in my Apple ID password.

20 In that system, is that practice -- is that practicing
21 any of the four asserted claims?

22 A. As long as no payment data was sent prior to this code
23 responsive to the payment validation data, then it wouldn't
24 meet the claim.

25 Q. Okay. And in that -- that is exactly my example. When

1 I download the content, I'm -- I'm not required to put
2 anything into the system. It's only after the content has
3 downloaded to my device.

4 THE COURT: Counsel, you need to ask questions.
5 You're making a speech to the witness. Break this up into
6 questions, please.

7 MS. FUKUDA: Okay. Sure, Your Honor.

8 Q. (By Ms. Fukuda) In the example -- would you agree that
9 this particular example is not covered where I download the
10 content first to my phone, and then now that I've got it on
11 my phone, before I play or use it, I supply the password for
12 my Apple ID?

13 Would you agree that that falls outside the scope of all
14 four of these claims?

15 A. When did you provide payment data? If you didn't
16 provide any payment data, then it wouldn't meet it.

17 Q. Right. I've never provided my password for my Apple ID
18 before I downloaded the content. It was only after I
19 downloaded the content that I'm prompted to enter my ID, just
20 like I otherwise would. All I'm doing is taking that step
21 that you showed to the jury and moved it further back in time
22 after download.

23 A. The -- entering the password in your ID isn't the --
24 isn't the way that payment data is met, so I don't think
25 that -- I think I would have to know what the payment data is

1 sent.

2 Q. Sure. Now, you understand that in a -- let's say in a
3 typical purchase, that when you enter your password for the
4 Apple ID, it is your testimony that at that point, a series
5 of DSID, GUID, and MID is sent to the Apple server, correct?

6 A. Yes, it's sent in a buy product re -- request.

7 Q. And in your opinion, is that -- it's those three things
8 taken together that's the payment data, correct?

9 A. Yes.

10 Q. Okay. So in my example, what I'm asking you, Dr. Jones,
11 is that I haven't done that yet. I haven't sent any of that
12 information yet. Instead, I get the content downloaded first
13 to my phone; and then before I get to use that content, now
14 I'm asked to put in my password, which results in sending the
15 DSID, GUID, and MID to Apple.

16 In that example, is that -- isn't it true that that's
17 not covered by any of these four claims?

18 A. That's correct.

19 Q. And just for the sake of clarity, let's just call this
20 the alternative download before entering Apple ID. Are you
21 okay with that?

22 A. No. I think we need to refer to it by the payment data.

23 Q. Okay. Let -- let's call it download before payment
24 data -- before entering payment data. How's that?

25 A. Okay.

1 Q. Okay. So in this example, you would agree that that
2 would not infringe the claims for any kind of content, right,
3 including apps, movies for purchase, movies for rental,
4 songs, ebooks?

5 A. As long as the payment data isn't sent until after the
6 movie -- until after this step of retrieving the data from
7 the data supplier, then it wouldn't infringe.

8 Q. Okay. Now, you didn't provide this particular
9 alternative to either Dr. Wecker or Mr. Mills, did you?

10 A. I believe for apps, that is quite similar to the
11 alternative identified. I would have to look back.

12 Q. Well, let's take a look at the alternative that you
13 supplied for the apps, if we could.

14 MS. FUKUDA: Maybe the best way to do this here is
15 let's pull up the slide that Mr. Curry had walked through
16 with you. It's Smartflash's Slide Deck 157.

17 Q. (By Ms. Fukuda) And I'll direct your attention to the
18 second paragraph. You see that?

19 A. I do.

20 Q. Okay. And that's the scenario you're talking about
21 right now, correct?

22 A. Yes.

23 Q. So the alternative you provided to Dr. Wecker and Mr.
24 Mills is that instead of purchasing apps the way a user on an
25 Apple system would do right now, instead, you would allow

1 users to browse for and install apps but require users to
2 complete each purchase by separately visiting a website and
3 entering payment information to unlock the app. That -- that
4 was your alternative, correct?

5 A. Yes.

6 Q. Okay. Now, the example -- the alternative I gave you
7 does not require a user to separately visit a website and
8 enter payment information; isn't that right?

9 A. That's correct.

10 Q. Wouldn't you agree that separately visiting a website
11 and entering payment information would require additional
12 effort by the users?

13 A. No.

14 Q. Wouldn't you agree that if -- if a user had to -- if
15 they download the app on their phone, then they have to go
16 pull up another browser, enter in their payment information
17 there, in order to come back and be able to use their app.

18 Wouldn't that be additional steps?

19 A. If you did it that way, but I don't think that's how you
20 have to visit a website.

21 Q. Well, you -- in your alternative, you didn't tell the
22 survey takers that they could -- instead of visiting a
23 separate website to enter payment information, that they
24 could instead do exactly what they're doing now to purchase
25 an app, except they don't do it at the moment they try to

1 down -- they don't do it before download, they just do it
2 after download. You didn't present that option?

3 A. That is effectively what I presented here.

4 Q. You think that separately visiting a website and
5 entering payment information is, in your opinion, the same
6 thing as punching in a password for your Apple ID the way
7 users purchase -- the way the users enter information now?

8 A. I think they're very similar, yes.

9 Q. Do you have any understanding that as -- well, let me
10 ask it this way: You agree that separately visiting a
11 website and entering payment information may be understood as
12 opening up Internet Explorer or Safari, navigating to a URL,
13 go to the payment page, and enter credit card information,
14 right?

15 A. That seems like the longest possible way to do it, so
16 I'm not sure that people would understand it in that way.

17 Q. But do you remember you had given deposition testimony
18 in this case, Dr. Jones?

19 A. Yes.

20 MS. FUKUDA: Could we pull up your September 25th,
21 2014 deposition transcript, Page 112, starting Line 16,
22 please?

23 Q. (By Ms. Fukuda) You see here that you were asked a
24 question: Well, the scenario I just described wouldn't
25 require the user to separately visit a website, correct?

1 And your answer: Separately visiting a website can be
2 as simple as putting up a pop-up of the simple website and
3 entering that information.

4 Next question: Or it could require a user to open up
5 Internet Explorer or Safari, navigate to a URL, go to the
6 payment page, enter credit card information, right?

7 And your answer on the next page was: You could do
8 that, yes.

9 Did you give that testimony at your September 25th, 2014
10 dep -- deposition?

11 A. Yes, and it's exactly what I just said.

12 Q. You still agree with that?

13 A. Yes.

14 Q. Now, when your scenario is presented to the survey
15 takers, you don't know how the survey takers understood your
16 sentence: Separately visiting a website and entering your
17 payment information, correct?

18 A. I can't know what -- what any person understands when
19 they read a survey. That -- that's not my area.

20 Q. It's possible that the survey takers thought that it
21 required them to go over to Internet Explorer or Safari, open
22 up a URL, and then -- and then entering the credit card
23 information, isn't it?

24 A. I don't know.

25 Q. Let's take a look at another one of your scenarios.

1 MS. FUKUDA: Back to Slide 157 of your presentation
2 under Video Purchase.

3 Q. (By Ms. Fukuda) You see that scenario?

4 A. I do.

5 Q. And your opinion was that the Apple's best
6 non-infringing alternative was to allow users to purchase and
7 stream the desired content. You see that?

8 A. Yes.

9 Q. Let's now take a look at your alternative to video
10 purchase and rental alternative.

11 MS. FUKUDA: And that's on Slide 154.

12 Q. (By Ms. Fukuda) Now, the best scenario -- the best
13 alternative that you presented was that instead of Apple
14 being able to offer their users the ability to both buy
15 movies and rent movies, now you're only going to allow users
16 to purchase that -- the movie. You can't rent it at all.

17 Wasn't that your best scenario?

18 A. For that one, yes.

19 Q. Well, isn't it true that what you could have
20 presented -- you could have also presented the alternative
21 that you can still purchase and rent movies, except that when
22 you do, you'd be streaming the content instead of downloading
23 it. Couldn't you have presented that?

24 A. I could have, yes.

25 Q. And -- but you never gave the users or the survey takers

1 the option to be able to stream rental content, did you?

2 A. No.

3 Q. And, Dr. Jones, I'm going to wrap up here, but I just
4 wanted to direct your attention to one more slide from your
5 presentation, and that's Slide 46.

6 MS. FUKUDA: Let's try Slide 40.

7 Q. (By Ms. Fukuda) All right. Well, these are not the
8 slides I had in mind. There's a mismatch between our deck.
9 I apologize.

10 Do you remember there was a slide that was directed
11 to -- there was a picture of an iPhone, and there were
12 multiple features that were point -- identified surrounding
13 the iPhone?

14 A. Yes.

15 Q. Okay. And there were things like, you know, touchscreen
16 and, you know, all the different content that's available.

17 If you can picture that in your head, I will -- that's
18 what I wanted.

19 MS. FUKUDA: Oh, thank you.

20 All right. That should be -- here we go. Slide
21 40.

22 Q. (By Ms. Fukuda) All right. That is Slide 40 from your
23 presentation, correct?

24 A. I believe so, yes.

25 Q. Okay. Thank you.

1 Now, in this particular slide, you see here the list is:
2 FaceTime camera, receiver from microphone, ring -- ring
3 silent switch, volume buttons, app icons, multi-touch
4 display, bottom microphone, headset -- oh, I'm sorry --
5 headset jack, status bar, iSight camera, rear microphone, SIM
6 card tray, home button, touch ID sensor, lightning connector,
7 speaker. I think I missed a couple. Sleep/wake button, LED
8 flash.

9 You see all that? Those are -- and those are just a few
10 of the features of the iPhone, correct?

11 A. Yes.

12 Q. Now, you're not testifying here that any of those things
13 are Mr. Racz's invention, right?

14 A. That's correct.

15 Q. And, in fact, the iPhone and all of these features that
16 were depicted here were, in fact, created, designed, built,
17 and made by Apple; isn't that right?

18 A. At least to a certain extent, yes.

19 Q. Well, those features exist on the iPhone, correct?

20 A. Yes.

21 Q. Apple made them? Apple made this device?

22 A. They did make this device.

23 Q. Okay. And Apple designed this device?

24 A. They did.

25 Q. Thank you very much.

1 MS. FUKUDA: Pass the witness, Your Honor.

2 THE COURT: Redirect by the Plaintiff?

3 MR. CURRY: Thank you, Your Honor.

4 May I put the big foam board with the Court's
5 constructions, on the easel?

6 THE COURT: You may.

7 MR. CURRY: Thank you.

8 May I inquire if the jury can see the entirety of
9 the board?

10 Thank you.

11 THE COURT: All right. Let's proceed.

12 REDIRECT EXAMINATION

13 BY MR. CURRY:

14 Q. Dr. Jones, did you apply the Court's constructions in
15 your analysis?

16 A. Yes, I did.

17 Q. Including for payment data?

18 A. Yes, sir.

19 Q. Will you please explain why DSID, GO -- GUID, and MID
20 are payment data under the Court's claim construction?

21 A. Yes. The GUID, MID, and DSID are data that are used to
22 make payment for content, and that's done when a user -- a
23 user's device sends a buy product request to get -- to pay
24 for the content that they would like to pay for, for example,
25 a movie or an app.

1 Q. Now, do you remember being asked some questions about
2 Visa and Mastercard and the point at which Apple would post
3 transactions to credit card companies?

4 A. Yes, I do.

5 Q. Does that matter for your analysis under the Court's
6 claim construction?

7 A. No. I certainly analyzed how the system operated, but
8 the time at which that transaction is posted is -- does not
9 affect my analysis under the Court's claim construction.

10 Q. Now, the Court's claim construction for payment data is
11 data that can be used to make payment for content. Who is
12 selling content?

13 A. It's Apple.

14 Q. Is Visa selling content?

15 A. No.

16 Q. Is Mastercard selling content?

17 A. No.

18 Q. And I think that you were asked some questions regarding
19 how a DSID can be used for other things as well.

20 Does the fact that a DSID or a GUID or MID, for that --
21 for that matter, does the fact that those pieces of data can
22 be used for other purposes somehow negate whether or not they
23 meet the Court's construction?

24 A. No, sir. I just compared them to the Court's
25 construction. Other uses, that's not something that's

1 covered in the -- the claims or the Court's construction.

2 Q. And in Apple's system, is the DSID linked to card
3 information?

4 A. Yes, it is, just as I explained.

5 Q. And you were actually asked some questions about the --
6 the setting up of an Apple ID to link credit card information
7 or -- or gift card information with an Apple ID.

8 Do you remember that?

9 A. Yes.

10 Q. What's the point of doing that?

11 A. The point of doing that is to allow the DSID, GUID, and
12 MID to be used to make payment for content.

13 Q. And does the DSID itself have value tied to it?

14 A. Yes, it does. That can be the gift card balance that
15 resides at the servers at Apple.

16 Q. I want to be very clear on this. Even if someone hasn't
17 even set up a credit card to be linked to an Apple ID, does a
18 DSID have value associated with it?

19 A. Yes, it does. It could be a zero balance if you haven't
20 gotten a gift card; but if you do put a gift card, then you
21 have a balance that's associated with that DSID.

22 Q. And when MZ Buy receives a buy product request, does it
23 check that value?

24 A. It does. If the -- if the product -- if it's not a
25 request for a free product, then it will check that value

1 first.

2 Q. And is that just one of the ways that MZ Buy validates
3 payment data?

4 A. Yes, it is.

5 Q. And you were asked questions about downloading free apps
6 by Ms. Fukuda.

7 Do you remember that?

8 A. Yes.

9 Q. Does an Apple product get payment validation data when
10 getting a free app?

11 A. No, because you haven't made payment.

12 Q. Is the payment validation -- I'm sorry.

13 Is the payment validation data that's received when
14 someone actually does buy an app, differ from the response
15 received from the Apple servers from MZ Buy when someone gets
16 a free app?

17 A. Yes, it does. When you pay for the app, there -- and --
18 what comes back in the response is the price. When you get
19 the app for free, what comes back is indication that you paid
20 zero dollars.

21 Q. And do you remember Ms. Fukuda asking you about
22 scenarios in which someone's DSID would get stolen?

23 A. Yes.

24 Q. Okay. Does Apple protect the communications between its
25 Apple devices and its servers?

1 A. Yes, they do. They do that by encrypting the
2 communications.

3 Q. And when you were performing your network captures, was
4 the level of protection for those communications different at
5 the point at which you would actually make a purchase?

6 A. Yes. Those communications were -- were further
7 certified, and we were not able to analyze those
8 communications because of the increased security.

9 Q. Now, you were asked a question about use rules being
10 numbers.

11 Do you remember this?

12 A. Yes, I do.

13 Q. A series of questions, right?

14 A. Yes.

15 Q. Can you please explain to the jury why a number -- a use
16 rule can be represented in a computer as a number?

17 A. Well, first of all, computers represent everything as
18 some type of a number. But, additionally, computers
19 traditionally represent things like permissions, rights, and
20 rules as numbers.

21 If we look at computer file systems, they represent
22 the -- the rights that a user has for access as individual
23 bits and fields, which are just numbers.

24 Q. Thank you, Dr. Jones.

25 And you were asked questions about the point at which

1 Apple gets paid.

2 Do you remember that?

3 A. Yes.

4 Q. Does anything in Smartflash's claim language, the
5 claims, or the Court's construction require that Apple be
6 paid the minute it receives payment data?

7 A. No, it doesn't.

8 Q. Do you remember being asked questions about Akamai?

9 A. Yes, I do.

10 Q. And who is Akamai again?

11 A. Akamai is the company with which Apple contracts to
12 perform -- or to be their content delivery network.

13 Q. Now, do you have a home?

14 A. Yes, sir.

15 Q. Have you ever hired an independent contractor?

16 A. Yes, sir.

17 Q. For what?

18 A. Performing work on the -- the house, to, for example,
19 put in a new bathroom.

20 Q. Did he do what you told him to do?

21 A. Yes.

22 Q. And you were shown the contract between Apple and
23 Akamai, and a lot of emphasis was put on independent
24 contractor. Do you remember that?

25 A. I do.

1 Q. Apple and Akamai are different companies, correct?

2 A. Yes.

3 Q. Okay. That contract explicitly -- let me -- let me ask
4 a question. Sorry.

5 Did that contract permit Apple to control Akamai's
6 business?

7 MS. FUKUDA: Objection, Your Honor. Witness is not
8 qualified to testify as to contracts.

9 MR. CURRY: Your Honor, he was cross-examined on
10 this.

11 THE COURT: I'll allow it. Overruled.

12 A. I don't believe it allowed them to control Akamai's
13 business.

14 Q. (By Mr. Curry) But in that same contract, did that
15 contract allow Apple to lease servers that are owned by
16 Akamai and for it delivering content to user for Apple's
17 systems?

18 A. Yes. What -- what the contract is establishing -- that
19 is, Apple is paying Akamai to run a particular content
20 delivery network for them.

21 Q. Does a data supplier have to be implemented on a single
22 server?

23 A. No. There's nothing in the claim language that
24 indicates that a data supplier can only be a single server.

25 Q. Can a data supplier be a computer system with multiple

1 servers?

2 A. Yes. There's nothing that would limit that.

3 Q. Does the patent even give an example of that?

4 A. It does.

5 MR. CURRY: Mr. Mortensen, please pull up Figure 6
6 of the '720 patent.

7 Q. (By Mr. Curry) Dr. Jones, what is Figure 6 showing?

8 A. It's showing a -- a data supply system -- in -- in
9 particular, the system 120, and that's composed of multiple
10 processors and functionalities that we can see across the
11 bottom.

12 Q. How do you know that that is the data supply system as
13 depicted in the patent?

14 A. The description of this figure in the specification --
15 in the portion with all the words in it.

16 MR. CURRY: Mr. Mortensen, go -- please go to
17 Column 11. All right. There at the top. Thank you, sir.

18 Q. (By Mr. Curry) How does the patent describe Figure 6?

19 A. Figure 6 shows a data supply computer system.

20 MR. CURRY: And, Mr. Mortensen, can we go back to
21 Figure 6 and leave that on the screen?

22 Q. (By Mr. Curry) Dr. Jones, what is Box 134?

23 A. That's the content distribution processor on the far
24 right side. It provides the content.

25 Q. And now back to the written description. Sorry.

1 MR. CURRY: Mr. Mortensen, can you go to Column 14,
2 Lines 34 through 50?

3 Q. (By Mr. Curry) What does the patent teach about
4 different ways to implement a data supplier, Dr. Jones?

5 A. It's indicating that the four elements along the bottom,
6 128, 132, 130, and 134, could be separate programs or a
7 single computer system. They might operate on a single,
8 physical computer, or they may operate on separate computers
9 and -- well, over separate computers.

10 MR. CURRY: And specifically, Mr. Mortensen, could
11 you highlight the last two -- Lines 49 and 50?

12 Q. (By Mr. Curry) Could you read that sentence, Dr. Jones,
13 starting with however?

14 A. However, in other embodiments one or more of the
15 processors may be coupled to web server 124 via Internet --
16 Internet 142 and owned and operated by a separate entity,
17 such as a financial institution.

18 Q. Thank you.

19 MR. CURRY: You can blackout that screen, Mr.
20 Mortensen.

21 Q. (By Mr. Curry) Dr. Jones, you were asked a series of
22 questions about selecting content when parental controls are
23 enabled. Can you please explain how a user is able to select
24 content as required by the claim language?

25 A. Yes. For example, the user can select the movies

1 category or TV's category -- TV season category in the video
2 app is one example of being able to select one or more
3 content items as required by the claims.

4 Q. And when -- if an Apple product has a piece of content
5 grayed out, does the Apple device still know and receive the
6 user selection, even on a grayed-out piece of content?

7 A. Well, that'd be the case, for example, in an iTunes app
8 or in the App Store app. In that situation, Apple will still
9 receive the user's touch, but it won't process it as a
10 selection.

11 Q. Have you ever -- you were asked a number of questions
12 about alternatives to infringement.

13 A. Yes.

14 Q. How many alternatives to infringement did Apple identify
15 in this case?

16 A. None.

17 Q. Are you qualified to identify a non-infringing
18 alternative of patent claims?

19 A. Yes.

20 Q. Are you confident that you identified the best
21 non-infringing alternatives in this case?

22 A. Yes.

23 Q. Do you remember being asked about the download before
24 entering payment data alternative?

25 A. Yes, I do.

1 Q. Is that effectively what you had identified in your
2 opinion?

3 A. Yes, just as I explained.

4 Q. Does that alternative -- let me ask a different
5 question.

6 Can that alternative be implemented in a number of ways?

7 A. Yes, it can.

8 Q. Does that alternative require all the steps that
9 Ms. Fukuda laid out, such as going to a web browser, entering
10 a URL, going to a website, et cetera?

11 A. No.

12 Q. Please explain to the jury one way the alternative could
13 work, and from an ease of use perspective, exactly the way --
14 exactly as easy as the competing alternative that she was
15 cross-examining you on?

16 A. That could be, for example, popping up a -- a view that
17 would -- in the same application that would take you to a
18 website where you could enter your payment information or
19 payment data.

20 Q. Dr. Jones, did you request to be compensated at twice
21 your hourly rate for this case?

22 A. No, sir, at my usual rate.

23 Q. To be an expert witness, does it require you just to
24 testify from memory of facts that have already happened, like
25 a fact witness?

1 A. No, sir.

2 Q. Finally, did Ms. Fukuda challenge you on how you said
3 the source code works, your network captures, or how you say
4 Apple's products work?

5 A. No, sir, I don't recall her doing so.

6 MR. CURRY: Pass the witness.

7 THE COURT: Further cross-examination.

8 MS. FUKUDA: No further questions, Your Honor.

9 THE COURT: You may step down, Dr. Jones.

10 All right. Plaintiff, call your next witness.

11 MR. WARD: Plaintiff calls Dr. William Wecker.

12 THE COURT: All right. Dr. Wecker, if you'll come
13 forward and be sworn.

14 MR. WARD: Your Honor.

15 THE COURT: Yes.

16 If you'll come around, please sir.

17 (Witness sworn.)

18 THE COURT: Please have a seat on the witness
19 stand.

20 All right. Mr. Ward, you may proceed.

21 DR. WILLIAM WECKER, PLAINTIFFS' WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. WARD:

24 Q. Good afternoon, Dr. Wecker.

25 A. Good afternoon.

1 Q. Would you introduce yourself to the jury, please, sir?

2 A. My name is William E. Wecker.

3 Q. And what do you do for a living, Dr. Wecker?

4 A. I'm a statistician.

5 Q. And where are you employed?

6 A. I now have a small consulting firm. I'm retired from
7 university, but I still do some of this sometimes.

8 Q. And what were you asked to do in this case?

9 A. I was asked to determine the importance of the
10 Smartflash technology to Apple and to consumers by means of
11 several surveys that I conducted.

12 Q. And we're going to discuss those surveys here in a
13 little while, correct?

14 A. Yes.

15 Q. All right. Before we do that, let's look at your CV.
16 And I'm showing you what's been marked as Plaintiffs' Exhibit
17 53. And can you tell us what that is?

18 A. That's my -- at least the first page of my CV or resume,
19 describing my background and experience.

20 Q. And will you tell us a little bit about your educational
21 background?

22 A. I received a Bachelor of science degree in 1963 from the
23 United States Air Force Academy. And then I was in service
24 with the Air Force for a number of years, but after some
25 years, I returned as a civilian to the University of Michigan

1 where I received a Master of science, and then the Ph.D.
2 degree in statistics and applied mathematics.

3 Q. And what did you do while you were in the Air Force?

4 A. Well, in the Air Force -- well, first, I went to pilot
5 training in Laredo, Texas. And importantly, got married
6 while I was there. But then it was flying Air Force
7 fighter-type aircraft at all sorts of places around the
8 world; England, North Africa, Germany, Philippines, many
9 other places.

10 Q. Did that include Vietnam?

11 A. And Vietnam.

12 Q. And did you receive the Distinguished Flying Cross for
13 Heroism for Combat over in Northern Vietnam?

14 A. Yes. That's a long time ago.

15 Q. Now, what did you do after receiving your Ph.D. degree?

16 A. After receiving the Ph.D., I accepted an offer to be a
17 professor at the University of Chicago, and we moved to
18 Chicago.

19 Q. And what were you teaching at the University of Chicago?

20 A. Statistics and applied mathematics to graduate students.

21 Q. And have you taught at any other universities besides
22 the University of Chicago?

23 A. Yes. I taught at University of California Davis and
24 Stanford and one year at -- in Czechoslovakia at the Prague
25 Technological University.

1 Q. Are you still teaching at the university level, or is it
2 mostly consulting work?

3 A. I'm retired now as a professor, although occasionally,
4 by invitation, I'll give lectures. But I've moved to
5 Wyoming, and I'm -- I'm no longer active in university work.

6 Q. One of the items on your resume is the Journal of the
7 American Statistical Association. What is that?

8 A. That's the -- two parts to the answer really. The
9 first -- the Journal of the American Statistical Association
10 is an academic journal that professors typically publish
11 their research in. It's the -- really the premier journal
12 for academic publications and statistical theory and methods,
13 both in the United States and probably around the world. I
14 think you'd get general agreement on that.

15 Then the second part is, what's -- what's an editor do?
16 And they run something called the peer review process, which
17 is to say they decide what gets published and what doesn't
18 get published. I did that job for that journal and others
19 for more than 20 years, and it's a very responsible position,
20 because young professors' careers depend on whether they're
21 published or not. So I spent a lot of time and was quite
22 careful in that work.

23 Q. As an editor?

24 A. As an editor, yeah.

25 Q. And was that a paid position?

1 A. No, it's not a paid position. It's what's called
2 service to the profession. It's just something you do along
3 with your regular work at the university.

4 Q. And does Plaintiffs' Exhibit 53, your resume, list other
5 various publications that appeared in that journal, as well,
6 if the jury wanted to look at them?

7 A. Yes. Not on this page, but on several pages that
8 follow, I have publications that are in that journal and
9 other journals.

10 Q. Now, among the subjects that you taught at the
11 university, did you teach statistical sampling and sample
12 surveys?

13 A. Yes, in virtually every introductory course I would
14 start with that topic because it's so fundamental.

15 Q. And did -- besides teaching, did you actually conduct
16 surveys, as well?

17 A. Over the years, I've conducted many surveys, yes.

18 Q. And did you provide us with a list of those, or at least
19 an example of some of the surveys that you performed?

20 A. Yes. At the bottom of this chart that I made, until I
21 ran out of room, I listed a few.

22 Q. Let's talk about one of them, briefly, the first one
23 there. Let's start there. The General Motors vehicle
24 owners. Can you tell us what that survey was about?

25 A. Yes. That's easy to describe. General Motors wanted to

1 know what their customers' experience was and what their
2 reaction was to certain of their vehicles.

3 And, of course, they didn't want to talk to a hundred
4 percent of them, so they got a statistician to design the
5 right kind of samples so they could talk to a smaller number
6 and then be confident that was representative of all of them.
7 And I did that work for them.

8 Q. What was the purpose of your surveys in this case?

9 A. The purpose, as I wrote on this chart here, is to
10 determine the importance of features enabled by the
11 Smartflash technology to consumers and to Apple.

12 Q. Now, before we --

13 MR. WARD: Your Honor, Plaintiff offers Dr. Wecker
14 as an expert in statistical sampling, including individual
15 surveys.

16 THE COURT: Is there objection?

17 MR. POST: No objection, Your Honor.

18 THE COURT: The Court will recognize him as an
19 expert in that field.

20 Proceed.

21 Q. (By Mr. Ward) Before you took the stand, did you have an
22 opportunity to review a number of exhibits that we're going
23 to be discussing today?

24 A. Yes, we did that this morning.

25 Q. We're not going to discuss all -- every page of those

1 exhibits, are we?

2 A. Well, I hope not.

3 Q. We're going to discuss selected pages, correct?

4 A. Yes.

5 Q. But the exhibits that we are going to discuss come from
6 Plaintiffs' Exhibit 54.001, 54.002, 54.003, 54.004, 54.005,
7 and 54.006, which are Attachments D through Y to your surveys
8 from August the 14th?

9 A. Yes, I can confirm that from this morning.

10 Q. And also, did you review Plaintiffs' Exhibits 204,
11 205.001, 205.0022, 205.003, 205.004, and 205.005?

12 A. I did.

13 Q. And those are the attachments, A through P, to your
14 January 2015 supplemental report?

15 A. Yes, that's correct.

16 Q. Is this just a subset of all the paper that was
17 generated from your surveys?

18 A. It's actually quite a small subset. There's more than
19 8,000 pages of work that was produced and made available to
20 all parties in this matter, but the particular attachments
21 that you have called attention to are the -- what I would
22 call the results pages where certain estimates are made.
23 There's about a 150 pages of results there.

24 Q. And how many different surveys did you do in this case?

25 A. Seven.

1 Q. Can you tell us a little bit about the surveys you
2 conducted?

3 A. Well, I can tell you about this first one here first,
4 and the others are going to be quite similar, so after
5 struggling through one of these, the rest should go easier.

6 Notice at the top of this chart, I had to have a name,
7 because there's seven different surveys. This is a chart
8 about the App Store. So I'm surveying and asking questions
9 of people about the App Store.

10 And I've titled it in the subtitle: The Importance of
11 the Smartflash Technology to Consumers, just to distinguish
12 it from the next survey. So I have two names.

13 The design of my survey here is what's called an
14 Internet survey. Now, Internet surveys have become quite
15 popular and normal in the last several years as the Internet
16 has grown and as more and more people have access to the
17 Internet.

18 And so what that means is that the people answering the
19 questions I'm going to be asking are answering on their
20 computers from wherever they are. And they're receiving the
21 questions on the computer, and then they're clicking with
22 their mouse or typing, and the answers then are coming back
23 to a central computer location and processed by me.

24 The sample size of this first survey was approximately
25 2,000. That's a good-sized sample for statisticians.

1 And the important thing about it is it's a
2 representative sample, and the easy -- so that when you
3 finish looking at the answers for 2,000 people, you can make
4 estimates for the entire United States based on that.

5 We've all seen, say, the CNN or other news programs
6 where they have surveys. So this is very much like that.

7 THE WITNESS: Oh, thank you.

8 A. My vendor here was ORC, who, in fact, does the surveys
9 for CNN, and they're very large, compared to me, at least.

10 And they have a panel of more than 1.7 million people
11 that they have organized and ready to receive questions.

12 And so I work with ORC. I do all the questions. I do
13 all the designs. All they do is provide me the access to
14 these people.

15 And so I go out and get a random sample of their 2.7
16 million panelists, and those are the people I'm going to ask
17 questions of.

18 So we can put this away and go back to the design chart.

19 Q. (By Mr. Ward) Have you used ORC prior to this survey?

20 A. Yes. I like their work. They've been very effective
21 for me many times.

22 So I want to explain about what a representative sample
23 is maybe just a bit more. Think of it this way: When you
24 look at my sample, it's going to have about 51 percent female
25 and about 49 percent male because it turns out, in the United

1 States adult population, that there's 41 percent male and --
2 51 percent female and 49 percent male approximately.

3 And then there's education levels and whether people are
4 employed and whether they own their home and whether they
5 live in the north or the south or the east or the west and a
6 whole bunch of other factors, so that when I'm done, my
7 sample is a really good match to the U.S. population.

8 And, therefore, I have a good basis for reaching
9 conclusions about the entire United States having looked at
10 only 2,000 people.

11 The -- the last line on this chart --

12 THE WITNESS: Oh, I'm sorry. Go ahead.

13 MR. POST: Object to being nonresponsive to the
14 question, Your Honor.

15 THE COURT: I'll sustain that.

16 We need to break these in smaller questions,
17 Counsel.

18 MR. WARD: Certainly, Your Honor.

19 Q. (By Mr. Ward) Did you conduct a direct elicitation
20 survey?

21 A. Yes.

22 Q. And can you tell us what direct elicitation is?

23 A. Yes.

24 Q. Will you do that?

25 A. Yes.

1 Direct elicitation is just a term that statisticians
2 use. It means nothing other than direct questions. There
3 are other ways to do surveys, more complicated, but this is
4 the most common. And even Apple does it, I've seen in their
5 documents.

6 So this is just a direct question method, and you'll
7 see, when I show the questions, what that means.

8 Q. What type of questions did you ask?

9 A. Well, the first set of questions I asked are -- were
10 demographic questions, such as are you -- what is your
11 gender, where do you live, the -- the items I mentioned a
12 moment ago.

13 Q. Why -- why did you do that?

14 A. Because I wanted to confirm that my sample design was
15 really working as I intended and was really good at giving me
16 estimates of the whole United States.

17 And I can confirm that by asking each and every
18 individual what their demographic information is and then
19 using my sample information to project the entire United
20 States.

21 And then I go to the United States Census information,
22 which is public data that you can download, and I find what
23 the full United States' answer to those questions are and I
24 can compare; and if my sample is not coming up with the right
25 answers, then something has gone wrong, and I can try to

1 figure it out.

2 But as it turned out, things were not going wrong. All
3 was well.

4 Q. And did you prepare an example of one of your validation
5 questions?

6 A. Yes. This is titled Question No. 6. It's one of
7 several questions, and it asks if you own or if you rent the
8 dwelling where you live, and you -- the respondent checks one
9 of those.

10 Q. And did you compare the answers that you received from
11 your survey respondents to census information?

12 A. Yes.

13 Q. And what were your results?

14 A. As you can see on this chart, the -- my survey estimate
15 is 66.7 percent own their home, and the census benchmark is
16 66.8. And that's a good confirmation that, on that score, my
17 sample is faithfully representative of the United States.

18 Q. Were you checking things besides home ownership?

19 A. Yes. In my report, I indicate 13 different factors
20 where I checked this, some of them having subfactors to them.

21 Q. And what are we looking at here? Is this Attachment P
22 to your report?

23 A. Yes. The -- may I explain?

24 Q. Sure.

25 A. The charts that I made for that that have the blue

1 backgrounds are large and suitable for viewing in a
2 courtroom, and -- but the chart we're looking at now is what
3 was actually published in my report. So it's small and hard
4 to see.

5 But the numbers that I've highlighted here, they're the
6 very same numbers that I showed in the larger format.

7 Q. And so all these validation responses, all the responses
8 we're talking about are contained in the information that you
9 produced in your report and provided to everybody?

10 A. Yes.

11 Q. Some numbers are highlighted and others are not. Will
12 we see that throughout our presentation today?

13 A. Yes. I'll have some highlighted and some not.

14 Q. And what is this question that we're looking at here
15 now?

16 A. Having dispensed with the validation checks with the
17 demographics, I then began with what I call Question 1. This
18 is the first substantive question. I wanted to find out
19 which people in my sample regularly use, say, in -- the first
20 on that list -- an Apple iPhone.

21 Throughout today, I think I won't take the time to read
22 these entire lists, and I'll use iPhone as an example, but
23 you can see I'm asking the same questions for iPad and iPod
24 Touch. But I'll just shorten it by saying -- finding out who
25 regularly uses an Apple iPhone.

1 Q. And are we looking at the results of the responses to
2 that first question?

3 A. Yes, sir. That's what it is. Then you see 36.6 percent
4 of U.S. adults, which is something I estimate for my sample
5 results, are users -- regular users of the iPhone and other
6 percentages for the other devices.

7 Q. And what is the confidence interval that you reference
8 on the right side of that slide?

9 A. The -- on the right of this chart is -- I labeled it a
10 95 percent confidence interval. It's -- it's the normal
11 thing that statisticians create whenever they make estimates
12 to show how accurate is the estimate. Anyone can make an
13 estimate, but only the statistician knows how to calculate
14 how accurate the estimate is.

15 And it's exactly the same as you see on the news
16 broadcast where they talk about a margin of error of plus or
17 minus 3 percent. It's exactly the same concept. And I just
18 express it as a range from this case, 34 to 38 percent,
19 approximately, showing the accuracy of my estimates.

20 Q. And did this confidence interval apply to all of the
21 estimates that you prepared?

22 A. Yes. Whenever I make an estimate, I calculate the
23 accuracy of it.

24 Q. What'd you do next?

25 A. Well, I'm jumping over to Question 2 because it's too

1 simple. There I just asked in Question 2: Did you also
2 purchase the iPhone if you are a regular user?

3 And in Question 3, I'm asking -- the important one is
4 the second line down -- have you purchased one or more apps
5 from the App Store, so that now I can find in my sample that
6 the people who regularly use an iPhone, who purchased that
7 iPhone, who have also purchased an app from the App Store,
8 and it's those people I want to get an opinion from as to the
9 importance of that, because they're the ones that are going
10 to know.

11 Q. These are the responses you got to that last question?

12 A. Yes, sir. It shows regular users and purchasers of the
13 iPhone and also who purchased an app. That's 59 percent of
14 the regular users of the iPhone.

15 Q. And what was your next question?

16 A. This next question asked that for each device listed
17 below, and one of those is the iPhone -- it invites the
18 respondent to consider the capability to purchase apps from
19 Apple's App Store.

20 And then the actual question in yellow: Did this
21 capability alone motivate you to buy the device? And then
22 they get to check yes or no or they don't know.

23 Q. Did you formulate this question by yourself?

24 A. I had a hand in ever question here, because I'm the --
25 designing the survey, and I know -- know how to do that. But

1 this particular question was requested of me, and I think it
2 was Mr. Mills who was most interested in this particular
3 question.

4 Q. And you understand that Mr. Mills is going to be
5 testifying after you?

6 A. Yes, I understand that.

7 Q. And have you worked with Mr. Mills before?

8 A. Yes, several times.

9 Q. And have you worked with his company Microeconomics?

10 A. Yes, I have.

11 Q. And we heard -- you weren't here for Dr. Jones's
12 testimony, or were you?

13 A. No, I was not. Just the last few minutes.

14 Q. And I'll tell you that he said that he gave you some
15 questions to formulate -- or assisted you in formulating some
16 questions; is that correct?

17 A. That's correct.

18 Q. And will we see some of those examples today as well?

19 A. Yes. They're coming up.

20 Q. Is this next slide the results of the responses that you
21 got to the last question?

22 A. Yes.

23 Q. And can you tell us what the results were?

24 A. Yes. Picking on the iPhone again, 30 percent of the
25 regular users answered that they were alone motivated to buy

1 their iPhone because of its ability to purchase and download
2 apps.

3 Q. And tell us about this slide. You've got regular users
4 and percent of purchasers. Why did you do that?

5 A. In the course of the activities that precede where we
6 are today, there are depositions, and the lawyers argue and
7 that sort of thing.

8 And I received some criticism that I hadn't calculated
9 this same result for purchasers who -- whether or not they
10 were regular users.

11 And I didn't think that was necessarily the best thing
12 to do, but because I have in mind somebody who purchased the
13 iPhone, handed it to their daughter and never used it, and
14 now I'm going to be asking them questions about something
15 they really don't know anything about.

16 I was not in favor of this, but it was an easy thing for
17 me to do it anyway. And so I calculated for purchasers, and
18 the numbers are about the same, a little higher, but not
19 importantly different, in my view.

20 And I won't be saying much more about purchasers. I'll
21 just go back to regular users.

22 Q. Did the results concern you at all about the way that
23 you were conducting the survey?

24 A. Not at all, no. Most -- most regular users are
25 purchasers, so there's a huge overlap between the two.

1 Q. And what are we looking at here?

2 A. This is the -- the next question. And it takes a little
3 concentration to follow this one.

4 We just asked if they -- if -- just think of one person
5 at a time. We just asked a Mr. Smith if he was alone
6 motivated to buy the iPhone because of the ability to
7 purchase and download apps.

8 Some -- he might have said yes; he might have said no.
9 But if he said no, he's not alone motivated, then I asked
10 this question. And the question is: What -- it amounts to
11 this, and then I'll read the question.

12 Even though it didn't have enough importance to you to
13 alone motivate you to buy your iPhone, it still might have
14 had some importance to you, and I'd like to learn what that
15 is.

16 So I'd phrase it this way: What portion, if any, of the
17 value do you attribute to the capability to purchase apps
18 from the App Store? And then they would write in the number,
19 and then here's the result.

20 Q. And tell us what those results were.

21 A. The -- for the iPhone, just -- you can read the other
22 numbers for yourselves, but for the iPhone, it was a percent
23 value of approximately 29 percent.

24 And you need to bear in mind, this is only for this
25 small group -- smaller group that said no to the

1 alone-motivate question.

2 Q. And are -- are we looking at value numbers that are
3 averages for all regular users here?

4 A. No. This is this group that was a regular user,
5 purchaser of the iPhone, purchased the app, and was not --
6 did not find the App Store so important that it alone
7 motivated them to purchase. It's -- it's a much smaller
8 group.

9 Q. And for all these results that we've been talking about,
10 are they summarized here on -- or in part on Plaintiffs'
11 Exhibit 205.0029, Attachment F, from your January 2015
12 report?

13 A. Yes. And I've highlighted in yellow the ones we've
14 displayed, and I understand those are also the ones that Mr.
15 Mills is going to be using.

16 Q. Are there other -- or there clearly is information
17 that's not highlighted -- highlighted, right?

18 A. Yes, sir.

19 Q. And why is that?

20 A. Because those are just other estimates I've made.
21 There's -- as I mentioned, there's 150 pages here, and Mr.
22 Mills is not using them all. And I'm sure you're thankful,
23 I'm not going to be showing or talking about all of them.
24 But they are in my report.

25 Q. Now, you did seven surveys. We're going to look at a

1 second survey now?

2 A. Yes.

3 Q. And tell us the difference from this survey to the one
4 we just talked about?

5 A. This is still a survey about the App Store, but it's
6 going to be asking different questions. And for this second
7 survey, I -- I went and got another random sample, this time
8 of 3,000 adults.

9 And everything else about the design is the same, so --
10 but this is a fresh new group of 3,000 people who are
11 answering my question.

12 Q. And what were you getting at with this survey?

13 A. This survey is going to get at what I call lost sales.
14 If Apple did not incorporate the Smartflash technology and
15 had a less capable iPhone, how many people would simply have
16 not bought that iPhone at the price it was offered?

17 And that -- those that did not, they're potential lost
18 sales to Apple. And that's why I call it at the top:
19 Importance to Apple.

20 Q. And did you validate your survey sample like we did in
21 the last survey?

22 A. Yes, sir, exactly the same. Went through all the
23 demographics, and everything is fine.

24 Q. And we're not going to go through those questions again,
25 right?

1 A. Going to be just like it was before.

2 Q. So what are we looking at with this question?

3 A. Well, now I am going to be repetitive, because this is a
4 new -- new group of people, so I have to, again, figure out
5 which ones are regular users of iPhones and go through all
6 that preliminary stuff to get down to the group I want to
7 ask.

8 So I ask my same first question: Have you regularly
9 used an Apple iPhone?

10 Q. And what are we looking at here?

11 A. This is the answers from this second group of 3,000
12 people. A little over 36 percent are regular users of
13 iPhones.

14 No surprise, because I knew that before. But I have to;
15 but I'm not just trying to learn it's 36 percent; I'm trying
16 to learn which people in my sample are -- are those people.
17 So I have to go through this.

18 Q. And did you compare this to the results of the regular
19 users from your first survey?

20 A. Yes, I did.

21 Q. And is that what we're -- the results that we're looking
22 at here?

23 A. Yes.

24 Q. And what did this tell you?

25 A. Well, it's a -- it's a form of checking. Replication is

1 an important thing in the world of statistics; and if I ask
2 the same question to two different representative samples,
3 I'm expecting to get the same answer.

4 There's -- there's other footnotes. You have to ask the
5 same question to the same kind of people and do it in the
6 same order. But in this case, I did all that. And so I'd
7 expect these to be close, and 36.6 is very close to 36.52.

8 Q. And so was that further validation of your technique?

9 A. Yes. That's further validation that my design is
10 working as I intended.

11 Q. And this -- this survey is entitled: The Importance of
12 Smartflash Technology to Apple. Correct?

13 A. Yes, sir.

14 Q. And so how did you go about testing that?

15 A. This question is the beginning of that investigation,
16 and the long preliminary material in blue on Question 5 is,
17 in fact, information that I got primarily from Dr. Jones.

18 And I'll describe in general terms what it is, and then
19 I'll read it maybe with a little paraphrasing, but I'll try
20 to read it through.

21 The idea here, as I understand it -- it's easy to
22 understand really -- is that this is a hypothetical question.

23 And it asks the respondent to consider an iPhone that is
24 not really the same as the iPhone they bought but is less
25 capable. It's been disabled to some degree. And the extent

1 of this disablement is what Dr. Jones -- and I was here for
2 this -- described as a non-infringing alternative.

3 I'm not a patent expert, so I'm not going to say any
4 more about that, but I heard -- I heard him say that.

5 Q. You're describing it as disablement, but it's really an
6 alternative is what you understand?

7 A. Yes. As -- as a non-patent person, it seems to me a
8 good way to think of it is just a slightly less capable
9 telephone, iPhone, because it doesn't have as good of
10 features as the one you bought.

11 So let me read this now so that we've all got this.

12 Q. Sure.

13 A. It says: Suppose -- and that word is the clue that this
14 is a hypothetical -- suppose that the features of the App
15 Store application that allows you to browse for, purchase,
16 install apps offered for sale, including games, were disabled
17 on all handheld devices, including those that you purchased.
18 Instead, you could browse for and install apps offered for
19 sale, but before using those apps, you would need to complete
20 each purchase by separately visiting a website and entering
21 your payment information to unlock the app. So that's what
22 the survey respondent is asked to think.

23 And then the question in yellow is: In that scenario,
24 would you still have purchased your device with your iPhone
25 for the price you actually paid? And some say yes, some say

1 no, and some say they don't know.

2 Q. Now, did you see any type of question that Apple
3 provided where it laid out what its non-infringing
4 alternative was that you should be asking about?

5 A. I'm not aware of that.

6 Q. Is this next slide the results of the responses to that
7 question we just looked at?

8 A. Yes.

9 Q. And will you tell us what the results were?

10 A. This is the percentages that said, no, they would not
11 have purchased their iPhone. This is what I called a moment
12 ago the lost sales. 19 percent and a little more of the
13 regular users of an iPhone said in response to my question
14 that they would not have purchased their iPhone at the same
15 price. And, therefore, unless Apple would do something like
16 lowering the price, they're going to lose 19 percent of these
17 sales.

18 Q. What was the next question that you asked?

19 A. The important part of this is the line at the top
20 because it says who's being asked this question. And it's
21 for those who would not have purchased, the 19 percent that I
22 just described. The question says -- with the same
23 preliminary, so I have to read it again.

24 It says: Could you -- in that scenario would you have
25 purchased, if you could have purchased at a price less than

1 the price actually paid? In other words, you wouldn't have
2 purchased at the price you paid but maybe you'd purchase it
3 if we lowered the price. And some say yes, and some say no,
4 and some don't know.

5 Q. And so the preamble is the same from the last question?

6 A. Yes.

7 Q. And that was provided to you -- or Dr. Jones assisted
8 you with coming up with that preamble?

9 A. Exactly.

10 Q. And then who assisted you with coming up with the
11 question that you've got highlighted?

12 A. Well, I wrote that.

13 Q. Did Mr. Mills have any hand in that?

14 A. It's hard to say. There was -- this is a collaborative
15 effort. There'd be conference calls, and I'd listen to them
16 and they'd listen to me, and -- but eventually, because I'm
17 doing the survey, I get the last word. So when it comes down
18 to finalizing this, that's me.

19 Q. Is the next slide showing the results to that last
20 question we just looked at?

21 A. Yes, sir, that's what it does.

22 Q. And can you explain what we're looking at on the slide?

23 A. Okay. This is the breakdown from the last question, and
24 it says that the -- as you read at the top, would not have
25 purchased one or more of their Apple devices at the price

1 they paid if it did not include the Smartflash technology.

2 So they wouldn't purchase at the price they paid. But
3 they -- some say they would purchase at a discount. And then
4 I go on to ask them how much of a discount. That's the other
5 question. And some say they wouldn't do it even at a
6 discount. That's on the right-hand side.

7 And so that's how I learned how Apple could possibly
8 recover some of these lost sales by a discount.

9 Q. And is the information on this slide summarizing the
10 information that we see on the next slide from Plaintiffs'
11 Exhibit 205.001?

12 A. Yes, sir, that's my -- that's an attachment to my report
13 that shows the numbers. They're smaller and harder to read,
14 but I put them in yellow, and they correspond exactly to the
15 number I just put on the larger format for us all to see
16 today.

17 Q. And were there other numbers that you didn't highlight
18 here?

19 A. 150 pages of them.

20 Q. And anything -- you don't know how those were used, I
21 take it?

22 A. Well, they're there for anybody to use. I calculate
23 lots of different things, like calculated the -- the extra
24 amount that iPhone users would be willing to pay to add the
25 Smartflash technology if it wasn't already there. And

1 hundreds of other things. And I -- I don't know what use
2 other people would necessarily make of those. They're just
3 there for others to use.

4 Q. Did you conduct a third survey?

5 A. Yes, sir.

6 THE COURT: Before we get into that third survey,
7 we're going to take a recess at this point.

8 Ladies and Gentlemen of the Jury: You may leave
9 your notebooks in your chairs. We're going to make this
10 about a 10-minute recess. Use this as an opportunity to
11 stretch your legs, get a drink of water.

12 Don't discuss the case among yourselves. And we'll
13 have you back in here shortly and continue. You're excused
14 for recess at this time.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Jury out.)

17 THE COURT: All right. The Court -- the Court
18 stands in recess for 10 minutes.

19 (Recess.)

20 (Jury out.)

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: Be seated, please.

23 Let's bring in the jury, please.

24 COURT SECURITY OFFICER: All rise for the jury.

25 (Jury in.)

1 THE COURT: Please be seated.

2 All right. Counsel, you may continue.

3 Q. (By Mr. Ward) Dr. Wecker, before we broke, we had
4 covered the first two App Store surveys; is that right?

5 A. That's correct.

6 Q. And we're about to look at the third survey; is that
7 correct?

8 A. Correct.

9 Q. And is that what we're looking at here?

10 A. Yes, sir, that's the third survey. This is on the
11 movies subject.

12 Q. And what was the feature that you were looking at with
13 this -- this survey?

14 A. The ability to download and -- movies and TV shows.

15 Q. Same kind of background that you did on the other two
16 surveys?

17 A. Yes, everything is parallel here, except I've now
18 recruited a whole new set of 2,000 people, so I have to go
19 through all those preliminaries again, which I won't torture
20 you with, but that all happened.

21 Q. We're jumping to Question 4a. Is that because we're
22 not -- not going through the validation questions?

23 A. I did them, but we're not going to have to talk about
24 them. We're going to jump into the substance here, if you
25 don't mind.

1 Q. Will you tell us what we're looking at on that slide?

2 A. Well, this is the Question 4a for regular users of --
3 I'll say iPhone again to be concrete -- who purchased that
4 iPhone, and also who rented or purchased movies or TV shows
5 to download from iTunes. So now I've got the group that I'm
6 confident has the experience to be able to answer this next
7 question. And so it's only them that I'm going to ask this
8 of.

9 And then I -- for those, I say for your iPhone, did this
10 capability to rent or purchase movies and TV shows from
11 iTunes, did this capability alone motivate you to buy your
12 iPhone? Some said yes, some no, some didn't know.

13 Q. Are these the results? Are we looking at the results?

14 A. Yes, sir, these are the results.

15 Q. And explain those to us, if you could.

16 A. For the iPhone, it's 22 percent and a little more for
17 regular users, so this is not as important as an App Store
18 capability, but it's still of noticeable importance. 22
19 percent said that this alone motivated them to buy their
20 iPhone.

21 Q. The numbers from the previous survey were indicating
22 that the ability to download and purchase apps was more
23 important than this feature?

24 A. Yes, sir.

25 Q. But this feature still had importance?

1 A. Yes, sir, that's right.

2 Q. And what's the next question that we are looking at?

3 A. Okay. For the ones who said they were not -- it was not
4 so important to them as to rise to the high level to alone
5 motivate them to purchase their iPhone, I asked of them --
6 well, in the vernacular -- well, it may -- it still have had
7 value, so I asked what portion, if any of its value, would
8 you attribute to the capability to rent and purchase movies,
9 TV shows, to download from iTunes? And then they could fill
10 in the box whatever they -- number they like.

11 Q. Is the next slide showing the results for that question?

12 A. Yes, it does.

13 Q. And would you tell us what the results were?

14 A. For the iPhone here, it's 20 percent and a little more.
15 20 percent of the value from this select group where I asked
16 this question. And, again, it's not as high a number as for
17 the App Store, but it still shows substantial value to the
18 consumers.

19 Q. And is this a summary of the results?

20 A. Yes. This is taken as a page from my report, and -- and
21 instead of the slides that I made to show in the courtroom,
22 it's the same numbers, but they're so small you can't read
23 them, and I put yellow on them to indicate that. And I
24 believe the yellow ones are also numbers that Mr. Mills is
25 going to use in his further work.

1 MR. WARD: And for the record, we're referencing PX
2 205.003.

3 Q. (By Mr. Ward) And that's -- what's on the bottom chart,
4 G1.1 from Attachment G; is that correct?

5 A. Yes, sir, that's the -- the chart number and the
6 attachment number in my -- my report.

7 Q. And, again, the highlighted numbers are what Mr. Mills
8 relies upon?

9 A. That's my understanding.

10 Q. And then there were a lot of other numbers that folks
11 could look at if they wanted to?

12 A. Anyone who wants to that's involved in this matter has
13 my reports. They can use them for any purpose.

14 Q. Now, is this the fourth survey?

15 A. Yes, sir.

16 Q. And what was the fourth survey?

17 A. This is still on movies, and in parallel to what I did
18 with the app survey, this is the lost sales piece. So I
19 title it to distinguish it, the importance to Apple, but it's
20 easier to keep in mind for me that it's going to be a
21 lost-sales-type calculation.

22 I go out and recruit another fresh sample here, and so I
23 have to go through all those preliminaries again. And then
24 I'll get into the substance right away and skip talking about
25 that.

1 Q. What are we looking at on this slide?

2 A. This is Question 7, and it's got -- it's a hypothetical
3 again. It says: Suppose that no devices, including the
4 device you purchased, like the iPhone, allowed you to rent
5 and download movies and TV shows from iTunes, and instead you
6 could purchase movies and TV shows at a price around three
7 times what the rental price would have been.

8 That's a hypothetical and was supplied to me by Dr.
9 Jones and I wrote it in there. And then I asked: In that
10 scenario, would you still have purchased the price at the
11 price you actually paid? Some will say yes, some will say
12 no.

13 Q. The next slide, is that looking at the results?

14 A. Yes, that's the results page.

15 Q. And tell us what those results were.

16 A. Four-and-a-half percent of the iPhone regular users said
17 they would have not have purchased their iPhone if it did not
18 include the capability that was referenced on the previous
19 page, so that's a smaller percentage than in the app stores
20 because it turns out my survey's teaching us that -- teaching
21 me, at least, that the movie capability is not as
22 important -- as important as app capability.

23 Q. And this is Question 8?

24 A. Yes. This is going to be: If you would not have
25 purchased at the price you paid, perhaps you'd purchase at a

1 discount. I explained that in the earlier survey, so this
2 should be easy because it's the same idea. So if you would
3 not have purchased at the price you paid, the part in yellow
4 says, perhaps you'd purchase at a price less than the price
5 you paid. Some will say yes, some will say no. And I have
6 the results on the next page.

7 Q. And these are the results we're looking at on Slide 39?

8 A. Yes, they are.

9 Q. And will you tell us the results?

10 A. Just a little more than 2 percent said they would
11 purchase at a discount, and around 3 percent said they would
12 not purchase even at a discount.

13 Q. And the results of this survey, are they contained in
14 Plaintiffs' Exhibit 54.001?

15 A. Yes, sir. That's where they are in my report.

16 Q. Same deal here, as far as what's highlighted? That's
17 what Mr. Mills relied on?

18 A. Yes.

19 Q. And then other numbers that are available for anyone to
20 look at?

21 A. Yes, sir, that's correct.

22 Q. So have we discussed Surveys 1, 2, 3, and 4?

23 A. Yes, sir. The two app store surveys and the two movie
24 surveys.

25 Q. There were three other surveys that you conducted?

1 A. Yes, sir.

2 Q. We're not going to go through those like we did the
3 other surveys, are we?

4 A. We are not.

5 Q. However, they are part of the record as Plaintiffs'
6 Exhibit 54.003, Attachments F, J, N, and X, and 54.004, G, K,
7 O, and Y.

8 And would they be the similar type questions with
9 summaries provided that we've been through with the other
10 surveys, Dr. Wecker?

11 A. They're very similar. Of course, there are differences
12 because it's a different topic.

13 MR. WARD: Pass the witness.

14 THE COURT: Cross-examination by the Defendant.

15 MR. POST: Kevin Post on behalf of Apple, Your
16 Honor.

17 May it please the Court.

18 THE COURT: You may proceed.

19 MR. POST: Your Honor, may we have leave to pass
20 out some materials to the witness and the Court?

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. POST:

24 Q. Good afternoon, Dr. Wecker.

25 A. Good afternoon.

1 Q. I don't believe we've had the chance to meet, have we?

2 A. I don't recall it.

3 Q. Okay. Well, it's good to meet you, sir. My name is
4 Kevin Post. I'm going to ask you some questions on behalf of
5 Apple today.

6 You've been handed a binder with some materials in it.
7 You should also have two bound copies of deposition
8 transcripts. So I just want you to know what you have and
9 where it is, sir.

10 Now, Dr. Wecker, you're -- you're not offering technical
11 opinions regarding infringement in this case, correct?

12 A. That's correct.

13 Q. Okay. And you're not offering technical opinions
14 regarding invalidity of the asserted patents; is that right?

15 A. That's also correct.

16 Q. Okay. You're not offering any opinions regarding
17 damages or a reasonable royalty in this case?

18 A. That's correct.

19 Q. Now, you're a statistician and an applied mathematician,
20 right?

21 A. Yes, sir.

22 Q. You're not an expert in consumer behavior?

23 A. I'm not.

24 Q. You have no knowledge of the content of consumer
25 behavior theory; is that correct?

1 A. Well, zero is a little small, but I'm not an expert at
2 it.

3 Q. Do you recall being asked a question about whether
4 you've heard of the order effect in consumer behavior theory
5 during your deposition?

6 A. I don't recall it, but if it's an order effect in
7 surveys, I know all of that.

8 MR. POST: Okay. Can we pull up Page 55, Line 20
9 through 56, Line 2?

10 Q. (By Mr. Post) So starting there at Line 20, you were
11 asked the question: Have you heard of the order effect in
12 consumer behavior theory?

13 Answer: I'm not an expert on consumer behavior theory,
14 and I have no knowledge of that particular content of that
15 theory.

16 Were you asked that question, and did you give that
17 answer, sir?

18 A. Yes, sir.

19 Q. Okay. Thank you.

20 Now, you agree that surveys are not always reliable,
21 right?

22 A. If you don't do them right, they're not reliable.

23 Q. You understand this is a patent case, correct?

24 A. I do.

25 Q. But you have no understanding of what aspects of the

1 patents the Apple App Store or the iTunes Store relate to,
2 correct?

3 THE COURT: Mr. Post, if you would slow down just a
4 little bit.

5 MR. POST: Sure.

6 THE COURT: Go ahead, Dr. Wecker. You can answer
7 the question.

8 A. I'm busy digesting the question, Your Honor.

9 THE COURT: Well, when you're through digesting it,
10 answer it.

11 THE WITNESS: Yes, sir.

12 A. I think I have some knowledge because I've been in court
13 for a few days. I heard opening statements. But I'm not
14 claiming to be an expert in that area.

15 Q. (By Mr. Post) The slides that you walked us through
16 today had the phrase Smartflash technology on them.

17 Do you recall that?

18 A. Yes.

19 Q. Okay. Do you have any knowledge about what that
20 technology is, sir?

21 A. I have this knowledge, so I have some, and that is, I
22 have an understanding of the functions that it enables in the
23 case of, say, the App Store, downloading movies and other
24 things. That's the knowledge I have.

25 Q. And the slides that you presented equated the Smartflash

1 technology with the capability, for example, to purchase
2 apps, correct?

3 A. I don't think I would say equate, but it is the
4 Smartflash technology that enables that capability as I
5 understand it.

6 Q. You don't have any opinion regarding whether the concept
7 of purchasing apps is broader than what is claimed in
8 Smartflash's patents, do you, sir?

9 A. No, I have no opinion on that.

10 Q. Now, you had some slides that showed a -- questions
11 regarding something called "alone motivate."

12 Do you recall those?

13 A. Yes, sir.

14 Q. Okay. And they were asking questions like, does a
15 certain capability alone motivate you to buy a device; is
16 that -- did I phrase that right?

17 A. Yes.

18 Q. Okay.

19 MR. POST: Mr. Lee, could we pull up Dr. Wecker's
20 Slide 13?

21 Q. (By Mr. Post) And this is an example, sir, of one of
22 those questions, right?

23 A. Yes, it is.

24 Q. Okay. So highlighted in the yellow: Did this
25 capability alone motivate you to buy the device? That's one

1 of the questions you were asking the survey participants,
2 correct?

3 A. Yes, it is.

4 Q. Okay. You agree that apps are an example of digital
5 data, sir?

6 A. That seems reasonable. I did teach computer science for
7 a while, so I have some knowledge of the area, but it's not
8 the sort of thing that a survey expert normally is expert in.
9 But I think I'll say yes to that as long as you don't get too
10 technical.

11 Q. Were you in court yesterday when Mr. Racz was
12 testifying, sir?

13 A. No.

14 MR. POST: Can we pull up the transcript from
15 yesterday afternoon, Page 125, 9 through 15?

16 Q. (By Mr. Post) So I'll -- I'll represent to you,
17 Dr. Wecker, that this portion of the transcript was coming
18 during Mr. Racz's testimony.

19 A. Very good.

20 Q. And if I could direct your attention, sir, to Lines 9
21 through 15. Mr. Racz was asked the following questions and
22 gave the following answers:

23 Question: You did not invent online sale of content,
24 correct?

25 Answer: We didn't, sir.

1 Question: Or online payment for content, correct?

2 Answer: We didn't, sir.

3 Last question: You didn't come up with the first way to
4 source and buy digital content over the Internet, right?

5 Answer: We didn't, sir.

6 Do you understand that testimony from Mr. Racz?

7 A. I can understand what was asked and what was answered.

8 Q. Okay. And as you said before, you have no specific
9 opinion about what -- about the scope of the Smartflash
10 technology, correct? Particularly in light of Mr. Racz's
11 testimony.

12 A. No. I think I do have an opinion on what -- when I
13 explained that my understanding is that Smartflash technology
14 enables certain capabilities. That much I think I
15 understand.

16 Q. Is it the capability to purchase apps, sir?

17 A. From the App Store.

18 Q. From the App Store. Okay.

19 Now, you have no opinion about what may or may not be a
20 non-infringing alternative to the asserted claims in this
21 case, correct?

22 A. I have no separate opinion. I have received information
23 from Mr. Jones that I understand to be a non-infringing
24 alternative, and I've read it, and it makes sense to me. But
25 it's -- it's not my opinion; it's his. It's not -- that's

1 his portion of the question.

2 Q. So you have no independent opinion beyond what Dr. Jones
3 has told you, correct?

4 A. Right. I have no expertise to design non-infringing
5 alternatives.

6 Q. And those -- those scenarios were provided by Dr. Jones?
7 Is that what you said?

8 A. Yes.

9 Q. And just so we're all clear, you're not offering an
10 opinion regarding whether those scenarios that Dr. Jones
11 provided you represent the patented functionality, right?

12 A. My understanding would be that they don't. That's the
13 point of them. They're non-infringing, so they wouldn't be
14 representing the patent.

15 Q. I'll -- I'll ask the question a different way.

16 You're not offering an opinion that the scenarios
17 provided to you by Dr. Jones are the best non-infringing
18 alternatives to the patent claims that are asserted in this
19 case, correct?

20 A. You're correct. I have no independent opinion of that.

21 Q. Okay. Dr. Wecker, you're -- you're being compensated
22 for your time spent working in this case, correct?

23 A. Correct.

24 Q. I think you -- you had indicated in your expert report
25 that your hourly rate is around \$700 an hour; is that

1 correct?

2 A. Correct.

3 Q. Okay. And you're the owner of William E. Wecker
4 Associates, Incorporated, in Jackson, Wyoming, right, sir?

5 A. Yes, sir.

6 Q. And you have some employees -- people who work with you
7 at your company who helped you on the work you performed in
8 this case --

9 A. Yes.

10 Q. -- correct?

11 A. Correct.

12 Q. And their average hourly rate, I think you testified,
13 was somewhere between 300 and \$550 an hour; is that correct?

14 A. Sounds about right.

15 Q. Okay. And you agree that it's reasonable for you and
16 your team to be compensated for the time you spent doing some
17 of the work described in those surveys, right?

18 A. Yes, sir.

19 Q. Now, you walked us through -- I think three surveys in
20 your direct testimony. One of the -- you mentioned four, but
21 I think that one may -- may have been an earlier survey. But
22 you did not walk us through all seven surveys you performed;
23 is that correct?

24 A. I'll answer the last part because I was a little
25 confused about the first part.

1 I didn't go in detail in all seven. That's -- that part
2 is correct. And the first part, I didn't fully understand.

3 Q. Do you recall being asked some questions in your
4 deposition about a Wave 1 set of surveys as compared to a
5 Wave 2?

6 A. I don't remember the questions, but I certainly know
7 what that means because I've used those terms myself, Wave 1
8 and Wave 2.

9 Q. So you had a set of surveys, and they're described in
10 the last page of your -- of your slides that were performed
11 and described in an August expert report; is that correct?

12 A. I don't think that's quite right. Would you like me to
13 explain?

14 MR. POST: Can we -- we actually pull up the last
15 slide of Dr. Wecker's demonstratives?

16 Q. (By Mr. Post) I'll point you right to them, sir.

17 A. Thank you.

18 Q. So here you have seven enumerated surveys, and those are
19 the seven surveys you -- you conducted; is that correct, sir?

20 A. Yes.

21 Q. And if we look below them, I believe Surveys 4, 5, 6,
22 and 7 all appear to be attachments to your August 25th, 2014
23 expert report; is that correct?

24 A. Yes.

25 Q. Okay. And that's different than the first three surveys

1 which were attachments to your second supplemental expert
2 report served in January of 2015, right?

3 A. It's different than -- in that the work was performed at
4 different times and recorded in different reports, but it's
5 not substantially different in what the nature of the work
6 was.

7 Q. But -- but as to the timing, you agree there was a Wave
8 1 that was described in that earlier period and a Wave 2 that
9 was -- was in the January report; is that fair?

10 A. No. It's true in a detail that is going to be
11 confusing. The actual work that I did with Wave 1 and Wave 2
12 combined Wave 1 and Wave 2 into a single group. But if that
13 doesn't help, I'll just go on and answer the next question.

14 Q. We'll see -- we may -- we may get to that detail, sir.
15 There were some -- some additional surveys that you conducted
16 in what we've been calling Wave 1 that was performed, I
17 think, in July and August. You performed a survey about
18 movies and TV shows. Does that sound right?

19 A. Yes.

20 Q. And a -- a survey about the App Store?

21 A. Yes.

22 Q. A survey about books and parental controls?

23 A. Yes.

24 Q. And a survey about music?

25 A. I think that's right.

1 Q. Okay. Now, you described that there was a -- a
2 difference that might get confusing between the two sets of
3 surveys. Your -- your first expert report describes surveys
4 that asked whether features motivated purchasers to buy a
5 product. Do you recall that?

6 A. Yes.

7 Q. Okay. And that's different than the questions we saw in
8 your presentation, which asked whether certain functionality
9 alone motivated purchases, right?

10 A. That's correct.

11 Q. Okay. Is that the difference you were referring to that
12 might get confusing?

13 A. No.

14 Q. Okay. There's a different one?

15 A. Yes. But I don't think the difference is all that
16 important. It's just I'm trying to be precise. So I'm -- we
17 shouldn't worry about it, I think. Let's just get on.

18 Q. Well, I'd -- I'd appreciate the clarification, sir.

19 Let's -- let's talk a little bit about those motivate
20 questions. The -- the questions you asked in those surveys
21 were provided to you by Smartflash's counsel, correct?
22 Smartflash's lawyers?

23 A. No, there -- that's not true at all. There was -- there
24 was conference calls and lawyers, and Mr. Mills and Mr. Jones
25 and I were on the conference calls and discussing the

1 surveys. But it would be wrong to think that the lawyers
2 provided the questions for these surveys.

3 Q. The motivate questions that you asked in your first
4 round of surveys, did you write that language?

5 A. No, not that question. I misunderstood you perhaps. I
6 thought you were talking about all the questions. But for
7 that question, I believe it's Mr. Mills who was the primary
8 person who suggested that, if I -- I hope I'm remembering
9 right.

10 Q. It wasn't you, though, right, sir?

11 A. Right, it wasn't me. I implemented that question with
12 the recommendation of Mr. Mills.

13 Q. Okay.

14 MR. POST: Mr. Lee, can you pull up Plaintiffs'
15 Exhibit 54.002 at Page 52? I think this may be the page.
16 It's a little bit different. Try Page 50. It'd be Question
17 4 at the top. Would you mind blowing that up?

18 Q. (By Mr. Post) So, Dr. Wecker, what we have on the screen
19 here is -- is Question 4 of your App Store survey that's an
20 Attachment M to your first expert report. Do you recognize
21 that question, sir?

22 A. Yes.

23 Q. Okay. And so here you're asking respondents whether the
24 capability to purchase apps from the Apple's App Store,
25 Google Play Store, Android Market, or Samsung Apps, motivate

1 you to buy the device?

2 Did I read that right?

3 A. Correct.

4 Q. And that's different than the alone motivate question
5 that you -- you showed in your slides; is that right?

6 A. That's correct.

7 Q. And you -- you created some -- some tables summarizing
8 the result of your survey; is that correct?

9 A. For all the surveys, I had tables, yes.

10 Q. Okay. Well, let's look at the one for this one.

11 MR. POST: Mr. Lee, can you pull up Plaintiffs'
12 Exhibit 54.002 at Page 2? And if you could go down to the
13 bottom to the Section A-Q4?

14 Q. (By Mr. Post) So, Dr. Wecker, this is a summary of some
15 of the results from -- from your survey. And if you see in
16 the second column, there's the number 99. Do you see that?

17 A. Yes.

18 Q. So that's the number of respondents who said yes to the
19 question of whether they were motivated to buy -- to buy
20 their device, here the iPhone, based on the capability to
21 purchase apps from the App Store; is that correct?

22 A. I think that's right. You've cut off the top part that
23 is -- where all the definitions are given, so it's a little
24 hard to figure this out. There, that's a help. Thank you.
25 So you're right, that's what the 99 is.

1 Q. Okay. So for those 99 people, it's your opinion that
2 they were not motivated to buy their Apple iPhone because of
3 its call capabilities, correct?

4 A. Let me read it. Just a second, please.

5 Q. Sure.

6 A. Why would you say not, because I think these are the
7 yeses.

8 MR. POST: Can you pull up Page 85, Lines 17
9 through 22, of Dr. Wecker's deposition, please?

10 Q. (By Mr. Post) So from Line 17 to 22, question: The 99
11 out of 214 (sic) people, and it is your position that they
12 were not motivated to buy the Apple iPhone because of its
13 call capabilities?

14 Answer: That's the way I would answer this, yes.

15 Were you asked that question? Did you give that
16 answer, sir?

17 A. Evidently I did, if they recorded it right. But when I
18 look at that table, it looks like it's the other way around.

19 Q. That was a yes, right, sir?

20 A. Go ahead, please.

21 Q. Okay.

22 THE COURT: All right. He's answered the question.

23 THE WITNESS: Yes, sir. Thank you, Your Honor.

24 THE COURT: But the witness is not going to direct
25 counsel to move along or let's go to the next thing. That's

1 inappropriate, Dr. Wecker.

2 THE WITNESS: Well, thank you, Your Honor. I -- I
3 won't do that.

4 THE COURT: All right. Let's move along, Counsel.

5 MR. POST: Certainly, Your Honor.

6 Q. (By Mr. Post) So for an iPhone purchaser in the context
7 of apps, the question about motivate to purchase, your
8 understanding is that that would be the only feature that
9 caused them to buy the device; is that correct?

10 A. That's not the way I would phrase it. If I have your
11 permission to say how I would phrase it?

12 Q. Let me ask you a different question. Can you speak
13 authoritatively as to what's in the mind of a survey
14 respondent who views that motivate to buy that question?

15 A. Well, I think no one can be authoritative about what's
16 in someone else's mind, no.

17 Q. And you can't speak authoritatively about what's in the
18 mind of these specific survey respondents because you didn't
19 interview them; is that right?

20 A. Even if you interview them, you don't know what's in
21 their mind.

22 Q. But at the very least, you did not interview them; is
23 that correct?

24 A. That's correct.

25 Q. Now, you never asked a survey respondent whether the

1 capability to place a phone call on an iPhone motivated their
2 purchase, did you, sir?

3 A. I didn't ask that question.

4 Q. You didn't ask whether screen size or resolution
5 motivated their purchase to buy an iPhone, did you, sir?

6 A. Correct.

7 Q. You yourself have an iPhone that you purchased because
8 of the large screen; is that right?

9 A. That's right.

10 Q. So your first set of surveys, those were the -- the
11 motivate question surveys; is that right?

12 You asked some other questions, but you did ask
13 questions about motivate to purchase, right?

14 A. Thank you. Thank you.

15 That's correct.

16 Q. And then you performed a second wave of surveys. Those
17 were the ones that you walked us through today that asked
18 about alone motivate; is that correct?

19 A. That's correct.

20 Q. And they also asked about something that we've referred
21 to as percent value.

22 Do you recall that?

23 A. Yes.

24 Q. Okay. And that's where you asked survey respondents to
25 say what they -- how much they valued certain features; is

1 that correct?

2 A. Correct.

3 Q. Okay. So if I refer to percent value, I'm referring to
4 that entry of numbers for value; is that fair?

5 A. Understood. Thank you.

6 Q. Okay. Now, you were asked to perform those second
7 surveys by Smartflash's lawyers, correct?

8 A. Yes.

9 Q. Okay. And this was because they wanted you to both
10 increase the accuracy of your population estimates made from
11 your original App Store survey scenario and also to provide
12 some additional survey evidence that the patented features
13 alone motivated the survey respondents to purchase the
14 accused devices.

15 Do you recall that --

16 A. Yes.

17 Q. -- in your next report?

18 A. I agree with that.

19 Q. Okay. So for Wave 2, rather than ask whether questions
20 motivated the purchase, now we're going to ask whether the
21 features alone motivated the purchase, correct?

22 A. That's so. I can explain if you like.

23 Q. Well, you agree with me that other than the insertion of
24 the word "alone," those questions about motivation are
25 otherwise the same, correct, sir?

1 A. For those surveys that -- where that's an appropriate
2 thought, yes.

3 Q. Okay. And just so we're clear, you did not do an alone
4 motivate survey for music, correct, sir?

5 A. Correct.

6 Q. And you didn't do an alone motivate survey about books,
7 right?

8 A. Correct.

9 Q. And you didn't do an alone motivate survey on parental
10 controls?

11 A. Correct.

12 Q. Okay. And just like Wave 1, you didn't draft the alone
13 motivate question that you asked in Wave 2, correct?

14 A. That's a misunderstanding, I'm afraid.

15 Q. Those questions were provided to you by Smartflash's
16 lawyers, correct?

17 A. That's also not true.

18 Q. All right.

19 MR. POST: Can we pull up Page 296, Line 25 -- or
20 Page 297, Line 20?

21 Q. (By Mr. Post) So we -- if you go up to the top, the
22 original question starting at Line 25, the prior page, the
23 question was: Did counsel tell you what questions to ask in
24 your new surveys?

25 Okay. Okay. So now we have it up. Starting at Line

1 25, you were asked --

2 MR. WARD: Your Honor, I'm going to object.

3 Can we approach the bench and take that down?

4 THE COURT: Approach the bench.

5 (Bench conference.)

6 MR. WARD: He's displaying on the screen my
7 objection, and I'm cautioning the witness about privilege and
8 what he can answer, and it's inappropriate for him to put
9 that type of instruction from counsel up unless he contends
10 that my instruction was somehow improper. It's not proper to
11 show the jury. It violates the MILs.

12 MR. POST: I'm not saying his instruction was
13 improper in any way. I'll be happy to direct him to the
14 paper version of the transcript to refresh his recollection,
15 if that would be the Court's preference, and that way I don't
16 need to display Mr. Ward's cautionary instruction. That will
17 be fine.

18 MR. WARD: I shouldn't have to object to remind
19 that he's not supposed to be displaying privileged objections
20 in front of the jury, Your Honor, is my point.

21 THE COURT: That's well put. You're responsible
22 for your technical person. If they're going to put that up,
23 then you're responsible for it.

24 MR. POST: Okay. Understood, Your Honor.

25 THE COURT: All right. It's down now.

1 To be honest with you, I think an instruction from
2 me just calls more attention to it than anything else, but
3 it's not going to happen again.

4 MR. WARD: If you could note that the objection is
5 sustained, it would be appreciated.

6 THE COURT: I'll sustain the objection for the
7 record.

8 MR. WARD: Thank you.

9 MR. POST: Thank you, Your Honor.

10 (Bench conference concluded.)

11 THE COURT: All right. That objection is
12 sustained.

13 Let's move on.

14 MR. POST: Mr. Lee, would you mind, please, pulling
15 up Plaintiffs' Exhibit 205.002 at Page 19, specifically
16 Question 4A?

17 Q. (By Mr. Post) And, Dr. Wecker, do you recognize this as
18 one of your alone motivate questions from Attachment J of
19 your App Store motivation survey?

20 A. I recognize it as one of my alone motivate questions. I
21 couldn't swear it's what the attachment number is.

22 Q. Okay. Well, I'll represent to you, sir, that it is from
23 Attachment J from the App Store survey.

24 A. Thank you.

25 Q. Now, this was a question -- now, this was the -- the

1 fourth question in a series of questions that survey
2 respondents were asked about App Store functionality; is that
3 correct?

4 A. I'll just say yes. It's -- not all the earlier
5 questions were about App Store functionality, but it's the
6 general idea, I guess.

7 Q. So there were some initial screening questions in some
8 of the validation questions you ascribed?

9 A. Yes, that's correct. That's why it wasn't quite right.

10 Q. Okay. Thank you.

11 So before respondents got to this question, they were
12 given some introduction about the specific functionality you
13 were asking about; is that correct?

14 A. Let me think, because you're not showing me the whole
15 thing. I've got to think from memory what was above it.

16 Q. Well, we can go --

17 MR. POST: Mr. Lee, can you pull up Page 17 of this
18 exhibit?

19 Q. (By Mr. Post) Dr. Wecker, do you recognize this as being
20 some of the information that survey respondents reviewed
21 before getting to Question 4A?

22 A. Yes.

23 Q. Okay. So this is some screenshots that they're provided
24 along with a description about the scenario they're going to
25 be asked about; is that correct?

1 A. That's correct.

2 Q. And you have a yellow box that's drawn around what
3 appears to be Google's Play Store; is that correct?

4 A. Yes.

5 Q. Now, looking at the screenshot on the left, it appears
6 that there's some other applications on the screen. Do you
7 see those, sir, things like Gmail?

8 A. Yes, I see it.

9 Q. And there's also an app called WhatsApp for messaging.
10 Do you see that?

11 A. Yes.

12 Q. And there's also an app for a camera?

13 A. Yes.

14 Q. Now, you didn't ask whether -- of the survey respondents
15 about whether they were alone motivated to buy a device based
16 on, for example, a camera functionality, correct?

17 A. Correct.

18 Q. You didn't ask them if they were alone motivated to
19 buy -- my apologies -- based on email capability?

20 A. Correct.

21 Q. Or messaging?

22 A. Correct.

23 Q. So after being shown these two screenshots, survey
24 respondents would eventually get to that -- that Question 4A
25 about whether they were alone motivated to purchase based on

1 apps, correct?

2 A. Correct.

3 Q. And your understanding of what it means for someone to
4 be alone motivated is that that feature is the thing that
5 caused them to buy the device, correct?

6 A. Yes.

7 Q. So under your understanding of the term alone motivate,
8 imagine if a survey respondent were asked two questions in a
9 row about alone motivate.

10 So Question 1: Were you alone motivated by the
11 capability of purchasing apps? And they could answer yes,
12 no, or I don't know, okay? That's Question 1.

13 And that same respondent then for Question 2 would be
14 asked the question: Were you alone motivated by the
15 capability to place a phone call? Yes, no, I don't know as
16 being the options, okay?

17 Can you keep that in your mind for me, sir?

18 A. Yes.

19 Q. So is it your belief that a respondent who answered yes
20 to that first question, that they were alone motivated to buy
21 based on the capability to purchase apps, would have to
22 answer no or I don't know to the second question about
23 whether they were alone motivated to buy based on the
24 capability to place a phone call?

25 A. I don't -- I think what happened is they just -- first,

1 I don't know what they would answer. But I think they would
2 be confused, because the capability of an iPhone, for
3 example, to place phone calls is so basic that it just is not
4 in the same category as an app-downloading feature.

5 And so these basic features, like whether it has a
6 battery or whether it can place phone calls, are just
7 fundamental characteristics of all phones. And so I just
8 don't think they're in the same category at all.

9 Q. But you didn't ask that question of any survey
10 respondent, correct?

11 A. I didn't ask, and I wouldn't ask. I think it would
12 create confusion.

13 Q. And you also didn't ask any survey respondent an alone
14 motivate question about any features other than the
15 capability to purchase apps and the capability to make movie
16 and rental purchases, correct?

17 A. Yes.

18 Q. And you didn't ask respondents about their motivations
19 to purchase in any specific time period, correct?

20 A. That's correct.

21 Q. So you didn't ask people whether they regularly used a
22 product or purchased a product in 2008, correct?

23 A. Correct. No dates.

24 Q. So we don't know with whether they purchased in 2009 or
25 2010, correct?

1 A. That's right.

2 Q. Or even 2014.

3 A. That's right.

4 Q. Dr. Wecker, I want to ask you some questions about the
5 percent value portion of your surveys.

6 So these were questions that were asked in addition to
7 whether certain features alone motivated purchase of
8 products, correct?

9 A. Correct.

10 MR. POST: Mr. Lee, can you pull up Plaintiffs'
11 Exhibit 205.002 at Page 20?

12 And if you could blow up Question Q4b?

13 Q. (By Mr. Post) Dr. Wecker, is this an example of one of
14 those percent value questions that you asked?

15 A. Yes, it is.

16 Q. Okay. Is it your belief that Smartflash's patent claims
17 cover all ways of purchasing apps?

18 A. I have no opinion on that. That's a patent expert's
19 area.

20 Q. You're not offering that opinion?

21 A. I have -- I have no opinion.

22 Q. So this percent value question, that's not a question
23 that was drafted by you, correct?

24 A. Just a moment.

25 I did draft that question, but the request to have a

1 question like this was suggested by, I think, Mr. Mills.

2 Q. Someone asked you to ask it, correct?

3 A. Right. But I wrote the question.

4 Q. Looking at that -- at that question, sir, if that
5 description of Smartflash's technology is too broad, your
6 survey generates an invalid response, correct?

7 A. I couldn't say. If it's too broad, someone would have
8 to explain to me what was too broad about it and why it would
9 be invalid. It's just not a topic that I could be definitive
10 about.

11 Q. Okay. So this percent value question, like the alone
12 motivate question, isn't asked about the value a survey
13 participant places on a particular capability at any
14 particular time, correct?

15 A. The particular capability, I think, is a yes, but the
16 particular time is a no.

17 Q. Okay. And these survey respondents are answering after
18 having answered questions that they already purchased and
19 owned a device, correct?

20 A. They purchased and regularly used the device.

21 Q. Okay. So as an example, someone would need to be a
22 regular user and a purchaser of an iPhone to get to this
23 question in your survey, correct?

24 A. They might still be screened out, but they have to be at
25 least that and some other things, too.

1 Q. Okay. So at the very least, they have to be that.

2 A. At the least, they have to be that.

3 Q. And they would be answering this question after having
4 used -- regularly used the App Store, correct?

5 A. No. That's not -- that's not the way it's phrased. I
6 can help you, if you like.

7 Q. They would need to be regular users of the iPhone; is
8 that correct?

9 A. Yes.

10 Q. And they would need to have purchased the iPhone and
11 downloaded at least one app, correct?

12 A. Exactly right.

13 Q. Okay. Thank you.

14 So they may have spent some money on that application,
15 correct? May have paid 99 cents for it?

16 A. They would have had to have purchased -- not a free one.
17 They would have had to have purchased an app.

18 Q. And they could have purchased many apps?

19 A. They could have purchased any number, yes.

20 Q. And just so we're clear, your percent value question
21 doesn't tell you how they would have valued the capability to
22 purchase an app before they actually went forward and did
23 that purchase, correct?

24 A. Let me think for a moment.

25 No, it doesn't tell them to answer this based on the

1 knowledge they had prior to ever downloading an app.

2 Q. Okay.

3 A. No, sir.

4 Q. Now, you agree with me that the percent value is not a
5 measure of value based on the purchase price of the device,
6 correct?

7 A. I agree with that.

8 Q. And your analysis did not address whether a percent
9 value of perhaps 10 percent relates in any way to the price
10 the survey participant actually paid for the device, correct?

11 A. Let me think.

12 I think there is a relationship, but it's not -- it's
13 not clearcut what it is.

14 Q. You didn't try to relate the percent value to the price
15 in any way, correct?

16 A. Well, I can now. I can see that it would have to be
17 something at or above that price or they wouldn't have bought
18 it in the first place.

19 Q. But you didn't do that as part of the analysis you
20 performed in this case, correct?

21 A. No. It's just obvious. I can see.

22 Q. You would agree with me that percent value may not be a
23 mathematically precise concept, correct?

24 A. Yes, I agree with that.

25 Q. You asked some questions about percent value in the

1 context of movies.

2 Do you recall those questions?

3 A. Not -- I can't by memory, but, in general, I do.

4 Q. Okay. Now, for your -- for those questions, your
5 percent value questions do not tell you what a participant --
6 what value a participant places on movie rentals alone,
7 correct?

8 A. That's right.

9 Q. And your percent value questions were asked only of
10 those participants who answered that they were not alone
11 motivated to buy based on a particular feature, correct?

12 A. Correct.

13 Q. In fact, it was your testimony that if someone answers
14 yes to the alone motivate question, you can't tell what
15 specific percent value they place on that feature, correct?

16 A. That's correct.

17 Q. And you didn't test the percent value that participants
18 placed on other features of a device like GPS, screen size,
19 or the ability to make calls, correct?

20 A. Correct.

21 MR. POST: Mr. Lee, can you pull up -- I believe it
22 was Slide 30 of Dr. Wecker's demonstratives?

23 Q. (By Mr. Post) Do you recognize this slide, sir?

24 A. Yes, sir.

25 Q. Okay. So I want to ask you a question about the 20.22

1 percent value number for iPhone.

2 So it's your opinion here that iPhone users who were not
3 alone -- alone motivated by the capability to rent and
4 purchase movies and TV shows has a percent value of 20.22
5 percent, correct?

6 A. Yes.

7 Q. So you would agree with me, then, that all other
8 features that the individuals who were not alone motivated by
9 this feature alone would be a hundred percent minus 22 --
10 20.22 percent or 79.78 percent; is that correct?

11 A. Only if they're independent features. If they're
12 interconnected or overlapping, then you would get more than a
13 hundred percent.

14 Q. So for independent features, though, you would agree
15 with me it would add up to --

16 A. Right.

17 Q. -- a hundred percent.

18 Dr. Wecker, would you agree with me that the way
19 questions are worded or -- in a survey can impact how they're
20 understood by survey participants?

21 A. Yes.

22 Q. Okay. So if -- if a question was asked about a percent
23 for meat that's 75 percent lean --

24 A. I didn't understand you.

25 Q. Sure. I'll start over.

1 Have you ever -- are you familiar with any academic
2 research about phrasing questions in a -- in a negative
3 manner and whether that can impact survey results?

4 A. Yes. I'm familiar with the general topic of phrasing
5 questions, including that.

6 Q. And did you consider that academic research when you
7 assembled the surveys that you conducted in this case?

8 A. It's part of my background and experience, yes.

9 Q. Okay.

10 MR. POST: Mr. Lee, can you pull up Plaintiffs'
11 Exhibit 201.001 at Page 56?

12 201.001 at Page 56.

13 Q. (By Mr. Post) Okay. Dr. Wecker, do you recall placing
14 bold -- or blue highlighting on certain words in your
15 surveys?

16 A. Yes.

17 Q. And one of those words was "disabled," correct?

18 A. Yes.

19 Q. And you -- it was your choice to put the word "disabled"
20 in blue text, correct?

21 A. Yes.

22 Q. And disabled is a -- has a negative connotation, doesn't
23 it, sir?

24 A. Yes. It's intended to.

25 Q. It's intentional.

1 A. Yes.

2 Q. Okay. Thank you.

3 You showed a slide about ORC and a -- the size of some
4 panels that they have.

5 Do you recall that?

6 A. Yes.

7 Q. I think the number was 1.7 million?

8 A. Correct.

9 Q. And just to be clear, you didn't ask any of your survey
10 questions to over 1.7 million people, did you?

11 A. I think I was clear I did not do that.

12 Q. Okay. Good.

13 MR. POST: Mr. Lee, can you pull up Plaintiffs'
14 Exhibit 205.002 at Page 9?

15 Q. (By Mr. Post) And this was one of the tables that you
16 showed us with some highlighting on the -- on the right-hand
17 side.

18 Do you recall that?

19 A. Yes.

20 Q. Okay. I want to ask you about some other numbers that
21 you didn't highlight.

22 And this is an app motivation survey; is that correct?

23 A. Correct.

24 Q. Okay. So -- so I make sure we all understand, for your
25 Wave -- for this app motivation survey, you started out with

1 2,009 potential iPhone respondents, correct?

2 A. Correct.

3 Q. Okay. And -- and actually, it was 2,009 potential
4 respondents total, right, for all those devices?

5 A. I don't understand the difference. Is that a different
6 question?

7 Q. So for this survey, you started with 2 -- 2,009
8 respondents, correct?

9 A. That's correct.

10 Q. Okay. And of those 2,009 respondents, 707 were regular
11 users and purchasers of an iPhone.

12 Do you see that --

13 A. That's correct.

14 Q. -- highlighted there?

15 Okay. And so of those 707 iPhone purchasers who were
16 regular users, 457 of them had purchased one or more apps
17 from the App Store; is that right?

18 A. Correct.

19 Q. Okay. And then of those 457 participants, just 230 of
20 them stated that they were alone motivated to purchase their
21 iPhone based on the capability to purchase apps, correct?

22 A. Correct.

23 Q. And you didn't highlight that number in your direct
24 testimony, did you?

25 A. Correct. I didn't highlight any of the counts of

1 individuals.

2 Q. Okay. So 230 respondents who met that criteria, that's
3 about an average of 4.6 respondents per state, right, if you
4 divide by 50?

5 A. Yes.

6 Q. Now, you're aware, sir, that Mr. Mills has identified
7 more than 206 million accused sales of iPhones in the United
8 States?

9 A. I don't know anything about that.

10 Q. Okay. Well, I'll represent to you that he has
11 identified that number.

12 So here we have 230 iPhone respondents in that segment
13 out of the more than 206 million iPhone users that Mr. Mills
14 identified in his report; is that right?

15 A. I don't know what his number is, but I doubt that it's
16 the same construction as mine. But in any event, there's a
17 lot more iPhone users in the whole United States than 230,
18 that's for sure.

19 Q. Okay. So I wanted to do just a little bit of quick
20 division.

21 MR. POST: Your Honor, may I approach the witness
22 with a calculator just to --

23 THE COURT: You may.

24 Q. (By Mr. Post) All right. Dr. Wecker, I'd like you to --
25 ask you to do some quick division for me.

1 Can you divide 230 into 206 million and tell me what the
2 result of that is as a percentage?

3 A. Well, if I've used your calculator correctly, it's a --
4 it's a very tiny portion of 1 percent. Is that good enough?

5 Q. So I think -- I tried to do it, and you can tell me if I
6 did it wrong, but I got .00011165 percent.

7 A. That's what I got.

8 Q. Okay. I'm just going to write that right here.

9 Now, for your percent value segment, we can see those
10 numbers right below this; is that right?

11 MR. POST: So if you could scroll down, Mr. Lee.

12 Q. (By Mr. Post) Here we see 227 participants who were not
13 alone motivated but had a percent value estimate that they
14 provided, correct?

15 A. Yes.

16 Q. Okay. So I'll ask you this time to divide 227 into 226
17 million. I expect you'll get a similar number.

18 A. I will agree immediately, it's going to be a similar
19 number.

20 Q. So I will -- I will tell you that I got the following
21 number, okay? And that number is 0.00011019 percent, right?

22 A. I'll agree with that.

23 Q. And so we're -- so we're clear these results are for
24 apps, right, sir?

25 A. Yes.

1 Q. The App Store motivation survey?

2 A. Right.

3 Q. Okay. And you did -- you have some similar tables for
4 movie and TV purchases, correct?

5 A. Correct.

6 MR. POST: So, Mr. Lee, if you could pull up
7 Plaintiffs' Exhibit 205.003 at Page 9.

8 Q. (By Mr. Post) Okay. And do you recognize this, sir, as
9 Chart G1.1, your Movies Motivation Survey results?

10 A. Yes, sir, I do.

11 Q. Okay. Great.

12 So we're going to do a similar process, but just to make
13 sure I'm in the right spot, for this survey, you started with
14 a segment of 2,021 respondents, correct?

15 A. Correct.

16 Q. Okay. And of those, 702 had purchased and regularly
17 used an iPhone; is that correct?

18 A. Correct.

19 Q. And then of those, 303 had rented or purchased a movie
20 using their iPhone, correct?

21 A. Correct.

22 Q. And we don't actually know what iPhone they used to --
23 to make that rental or purchase, right?

24 A. You mean model number?

25 Q. Correct.

1 A. Don't know the model, no.

2 Q. It could be an iPhone 3G with a small screen or an
3 iPhone 6 Plus with a large one?

4 A. Correct.

5 Q. Okay. So of those 303 iPhone users, 165 responded that
6 they were alone motivated by the capability to rent and
7 purchase movies, correct?

8 A. Correct.

9 Q. Okay. So if you could do me a favor and divide 165 into
10 206 million, and tell me what that number is as a -- as a
11 percentage, sir.

12 A. Your calculator quit.

13 Q. I actually have a backup, if you want one, sir.

14 A. Well, it's blank. But I can approximate this quickly.
15 It's going to be not very far off from where we are.

16 Q. Okay. So I got, when I did the math on my iPhone, a
17 0.0000801 percentage. Does that sound --

18 A. That's -- it's going to be approximately that, yes.

19 Q. And then you also have some results for percent value
20 for this survey as well, correct?

21 A. Correct.

22 Q. So if we scroll down to the table below, we see a
23 segment with 138 participants, correct?

24 A. Correct.

25 Q. And I'll represent to you, since our calculator quit on

1 you --

2 A. Your calculator.

3 Q. My calculator, exactly. Thank you.

4 That 138 divided into 206 million is 0.00006699.

5 A. That sounds about right.

6 Q. Okay. I'll write that one down, too.

7 Sir, do you consider the capability to buy an app to be
8 an independent feature from, say, rental and purchase of
9 movies and TV shows?

10 A. I think so. That may take some discussion; but the
11 overlap would occur if you were also thinking about, say, a
12 battery, which would influence both. But I think the one
13 part -- I'd want to talk to another expert on this, but I
14 don't think the one influences the other. It's really not my
15 professional area.

16 Q. Okay. And do you have an opinion about whether the
17 capability to purchase apps is an independent feature from
18 screen size?

19 A. Probably not.

20 Q. How about battery life?

21 A. Right, not battery life either.

22 Q. But build quality of a phone?

23 A. That -- that would require even a definition of what it
24 is.

25 MR. POST: I pass the witness.

1 THE COURT: Redirect?

2 MR. WARD: May we approach, Your Honor?

3 THE COURT: You may.

4 (Bench conference.)

5 MR. WARD: Your Honor, I tried to stay away from
6 the previous survey where we had this question where it was
7 motivate, and then we moved to alone motivate.

8 He got into one survey -- one question one way with
9 motivate without the word "alone," and the second survey he
10 added it. He added it because they criticized him. The
11 damages report was struck. And so he had to do new surveys.

12 I'm entitled to ask him: Did you add that word
13 because of the criticism you received from Apple's lawyers?

14 And I don't think that gets into our damages expert
15 getting struck. Otherwise, I'm fighting with one hand behind
16 my back.

17 MR. POST: Your Honor --

18 THE COURT: What's the response?

19 MR. POST: Your Honor, we made no reference to the
20 Daubert motion. The Daubert motion on -- on Dr. Wecker was
21 denied.

22 So the Daubert was granted on Mr. Mills, based on
23 his interpretation and reliance on those -- that data a
24 certain way. But, you know, Mr. Ward took the --

25 THE COURT: As I understand it, the grant on Mr.

1 Mills was based on the surveys not being limited to that
2 being the alone motivating factor.

3 MR. POST: Right. Based on the way Mr. Mills
4 applied that --

5 THE COURT: So you attacked Mr. Mills' testimony,
6 but you attacked it based on the underlying survey data from
7 the original survey; is that correct?

8 MR. POST: On his interpretation of that data,
9 that's right, on what it meant.

10 Additionally, Your Honor, the -- there are certain
11 surveys as part of that Wave 1 that Dr. Wecker has used to
12 increase his sample size.

13 So those surveys are certainly relevant. They were
14 on Mr. Ward's demonstratives. He wanted -- they've --
15 they've asked to pre-admit them, and I assume they're going
16 to say they're admitted.

17 So, you know, I think it's -- it was fair to
18 explore. We didn't go anywhere near suggesting that he was
19 Dauberted in any way. He wasn't. So I stayed away from
20 that.

21 THE COURT: I'm not going to let you ask him a
22 leading question about did you change the surveys based on
23 criticism from Apple. I think you can ask him, did he alter
24 his surveys and why. But I don't think you can ask that as a
25 leading question.

1 MR. WARD: And I'm worried about asking him, that
2 he's not going to know this line that we're walking --

3 THE COURT: If he doesn't have personal knowledge
4 of it, he can't testify --

5 MR. CALDWELL: He knows, but he's trying to respect
6 your -- your motions in limine is the problem.

7 THE COURT: Are we all mind-readers? Do we all
8 know what --

9 MR. CALDWELL: We've tried to make sure he
10 understands all the rulings in limine, so --

11 THE COURT: I'm not going to let you ask it as a
12 leading question. If you choose to go there, you can ask it
13 as a non-leading question about his reason for changing or
14 amending the surveys.

15 MR. WARD: May I remind the witness that he's
16 instructed not to reference the Daubert motion or the
17 striking of Mr. Mills' report? Because --

18 THE COURT: Yes.

19 All right. Hang on a minute. Tell me why we took
20 numbers from 2,000 people, and then you divided it into 200
21 million.

22 MR. POST: Why did we do that?

23 THE COURT: Just to make little tiny zeros like
24 that?

25 MR. POST: And the perfect point is that they're

1 asking for \$850 million from Apple based on results from 200
2 (sic) people. So that's a point that we think is -- is
3 important.

4 THE COURT: Well, I don't understand why you asked
5 him to divide it into 200 million -- 200 plus million people
6 when the survey itself never touched more than a couple
7 thousand people to begin with.

8 MR. POST: So Mr. -- so Mr. Mills, in his --

9 THE COURT: There was no objection to irrelevance,
10 but it seems like to me it was an intentional attempt to
11 confuse the jury, and I'm not going to sanction the
12 intentional attempt to confuse the jury.

13 MR. POST: Okay. This certainly was not, Your
14 Honor. I think in the next witness you'll see where that 206
15 million number comes from. But I would never
16 intentionally --

17 MR. WARD: Your Honor, I didn't object because I
18 don't have Dr. Dhar's report memorized. He's their survey
19 expert. But I'll be anxious tonight and I will go back and
20 look and see if there was criticism about the sample size
21 that he surveyed. I don't recall that being a criticism, but
22 I'll look.

23 THE COURT: And the Court will take a very dim view
24 of any attorney before it, that attempts to intentionally
25 confuse the jury.

1 All right. Let's go forward.

2 MR. CALDWELL: Thank you, Your Honor.

3 MR. WARD: And, Your Honor, just to be clear, am I
4 permitted to instruct the witness -- remind him about the
5 limine, that he cannot refer to the Daubert motion, Mr.
6 Mills' prior report being struck, or did I misunderstand you?

7 THE COURT: You can instruct him about -- I think
8 it should be more generic. I think you should instruct him
9 not to infer that anything happened during the pretrial
10 process.

11 MR. WARD: Okay.

12 THE COURT: I think he'll understand that.

13 MR. WARD: I'll do that.

14 (Bench conference concluded.)

15 THE COURT: Let's proceed, Gentlemen.

16 REDIRECT EXAMINATION

17 BY MR. WARD:

18 Q. Dr. Wecker, do you remember the questions about long
19 division and the tiny fractions that resulted as a result of
20 that division?

21 A. Yes, I remember all that.

22 Q. Has there been any criticism of the sample size or the
23 methodology in which you conducted these surveys prior to
24 today?

25 A. The -- no, there haven't, and this is not criticism of

1 it either.

2 Q. Does this have anything to do with the reliability of
3 your survey?

4 A. Absolutely nothing. It's a common statistical fallacy
5 to believe that fractions like this indicate accuracy when
6 they absolutely do not. Accuracy is the confidence intervals
7 I calculated.

8 Q. Is that confidence interval something that you were
9 always looking at to confirm your sample size and the
10 accuracy of that sample size?

11 A. To confirm the accuracy; and if I thought it was
12 insufficient, I would increase the sample size.

13 Q. Did you think your sample size was insufficient in this
14 case?

15 A. It was not insufficient. It was adequate and
16 sufficient.

17 Q. Have you ever seen a survey that attempted to go out and
18 survey 206 million adults in the United States?

19 A. Yes, the U.S. Census.

20 Q. Besides the U.S. Census?

21 A. No.

22 Q. That's a rather expensive census that's done every 10
23 years?

24 A. Yes.

25 Q. Did Apple produce a survey that you could look at where

1 they went and surveyed their 206 million iPhone users?

2 A. No.

3 Q. Do you know if Apple has a survey department?

4 A. I believe they do.

5 Q. And have you actually seen some of the survey results
6 from Apple's surveys?

7 A. I have.

8 MR. WARD: Can we pull up Dr. Wecker's Slide 15,
9 Mr. Mortensen?

10 Q. (By Mr. Ward) Remind us what we're looking at there,
11 and let's reference the iPhone in the top left-hand corner
12 with respect to this survey question.

13 A. Yes, sir. This is the App Store survey, and this is 30
14 percent of iPhone regular users were alone motivated to buy
15 their device -- to buy their iPhone because of its ability to
16 purchase and download apps from the App Store.

17 MR. WARD: And, Mr. Mortensen, could we look at PX
18 103.028, Slide 10?

19 MR. POST: Your Honor, object. This goes beyond
20 the scope of the -- the witness's expert report.

21 THE COURT: You're going to have to speak louder,
22 Mr. Post, if you want me to hear you.

23 MR. POST: Sorry. I got too far away from the mic,
24 Your Honor.

25 I object to this question to the extent Dr. Wecker

1 had no opinions about Apple surveys in his expert report,
2 didn't rely on any.

3 THE COURT: Overruled. You've opened the door.
4 I'm going to allow the Plaintiff to proceed with this line of
5 questioning.

6 Q. (By Mr. Ward) All right. Are we looking at a survey
7 from -- that Apple conducted, Dr. Wecker?

8 A. Yes.

9 Q. And across the top there it says reasons for purchase
10 center around the benefits of owning a smartphone -- a
11 notable percentage mentioned being a -- and then on the left
12 side --

13 MR. WARD: Can we blow up that first column that's
14 U.S. and main reason for -- main reason for purchase?

15 Q. (By Mr. Ward) All right. So would you read what it
16 says on the left side of those percentages?

17 A. Main reason for a purchase.

18 Q. And then over on the right, we're got a color code,
19 correct?

20 A. Yes.

21 Q. And what does purple correspond to?

22 A. It corresponds to wanted to use apps.

23 Q. And what percentage from Apple's own survey does it say
24 is the main reason for purchasing 24 percent?

25 A. Well, you just read it. It's the 24 percent wanted to

1 use apps.

2 Q. And then what about 40 percent, main reason for
3 purchase?

4 A. Wanted phone that combine music, email, web games, apps.

5 Q. And I don't think you need a calculator, but will you
6 add up -- if you do, I'll give it to you -- will you add up
7 those numbers, just ballpark, the percentages?

8 A. The total of them?

9 Q. Yes, sir.

10 A. Around 160, maybe.

11 Q. And you testified that there could be more than one
12 reason that a purchase -- a person might purchase an iPhone,
13 correct?

14 A. Yes.

15 Q. Yet Apple's own survey, when they checked main reasons,
16 it shows various percentages that add up well above a hundred
17 percent, right?

18 A. That's true.

19 Q. And is that 24 percent from Apple's own survey within 6
20 percentage points of your survey?

21 A. Yes.

22 MR. WARD: Mr. Mortensen, if we could look at PX
23 103.028, Page 1242? And blow up the top left-hand corner,
24 just first three rows. Top three rows, there you go.

25 Q. (By Mr. Ward) And, again, are we looking at another

1 survey from Apple?

2 A. Yes.

3 Q. And according to this survey from Apple --

4 MR. WARD: Strike that.

5 Q. (By Mr. Ward) What is n equals 1184?

6 A. That'd be a sample size.

7 Q. Is that smaller than your sample size?

8 A. Usually smaller. I had 2 or 3,000.

9 Q. So it was apparently good enough for Apple for this
10 survey?

11 A. Yeah, I have no criticism of a thousand. That's usually
12 adequate.

13 Q. And what do they say about the main reason for purchase?
14 What's the percent who purchased because they wanted to use
15 apps?

16 A. The 29 percent, and I think the arrow means an
17 increasing of -- had a main reason because they wanted to use
18 apps.

19 Q. That's within 1 percent of your 30 percent, is it not?

20 A. Yes, it is.

21 MR. WARD: And one more, Mr. Mortensen, PX
22 103.028-1345?

23 Q. (By Mr. Ward) And could you just read that?

24 A. Web capabilities, ease of use, and apps are a key -- are
25 key features in the decision to purchase an iPhone.

1 MR. WARD: Thank you, Mr. Mortensen. You can take
2 that down.

3 Q. (By Mr. Ward) Do you know what the meaning of stipulate
4 is?

5 A. I think so.

6 Q. What do you understand stipulate to -- to mean?

7 A. I think in the legal setting, it means parties have
8 agreed to something.

9 Q. And were you aware that the parties filed a joint
10 stipulation in this case that Apple has not identified any
11 design-around non-infringing alternatives and opinions of
12 counsel?

13 A. I was not aware of that.

14 Q. That was read to the jury earlier today, and I'll
15 represent to you that that's a stipulation the parties
16 have -- have entered into, okay?

17 A. Yes.

18 Q. Mr. Post asked you some questions about whether you were
19 representing that the non-infringing alternative that
20 Mr. Jones had provided to you, whether you were representing
21 that that was the best non-infringing alternative. Do you
22 recall that question?

23 A. Yes.

24 Q. That was the only non-infringing alternative, wasn't it,
25 Dr. Wecker?

1 A. It's the only one I knew of.

2 Q. Certainly none has been provided to you by Apple, has
3 it?

4 A. Correct, none has been.

5 MR. WARD: Pass the witness.

6 THE COURT: Additional cross?

7 MR. POST: Very brief, Your Honor.

8 THE COURT: All right. Proceed.

9 MR. POST: Mr. Lee, would you mind pulling up
10 Plaintiffs' Exhibit 103.028, Page 10, I believe?

11 RECROSS-EXAMINATION

12 BY MR. POST:

13 Q. And, Dr. Wecker, you were just asked some questions
14 about this slide. Do you recall those?

15 A. Yes.

16 Q. Okay. So at the bottom, do you see at the end of that
17 sentence it says: Base, iPhone buyers; up to three reasons
18 could be selected?

19 A. Yes.

20 Q. So you understand that to mean that a survey respondent
21 could select three different main reasons for purchase,
22 correct?

23 A. That's what it appears to mean. I don't know the
24 details here.

25 Q. So would you agree with me that this survey is not

1 asking about the only reason for purchase?

2 A. Let me think. I think I agree. It's -- the main reason
3 for purchase, and apparently they're allowed to list up to
4 three.

5 Q. And if you look on the right-hand side of that legend
6 that you talked about, there was a -- a purple for wanted to
7 use apps. Do you see that?

8 A. Yes.

9 Q. Now, it's not your understanding that the use of apps is
10 the Smartflash technology, is it, sir?

11 A. I -- I believe you're correct. It's the ability to
12 purchase and download apps from the App Store is my
13 understanding.

14 Q. Another question for you. You answered a question that
15 n, I believe on one of the surveys, was smaller than your
16 sample size. Do you recall that?

17 A. Yeah, it was about 1100, and mine varied because I did
18 many different ones, but generally, 1100 is smaller, but I
19 had no criticism of it. 1100 is usually adequate.

20 Q. Okay. So for this -- this slide, if you look underneath
21 U.S., the end is 1387, right?

22 A. Yes.

23 Q. Isn't that the number of people answering this question,
24 sir?

25 A. I don't know. I don't know enough to -- to know what it

1 is. I just thought it was a sample size, which is what it
2 usually is.

3 Q. But you don't know for sure?

4 A. No, I don't know the details of this survey.

5 Q. Haven't studied it?

6 A. I'm sorry, was that a question?

7 Q. You have not studied it, correct?

8 A. I know nothing more than this chart, which I'm looking
9 at here.

10 Q. Okay. Same is true of the other three surveys you were
11 shown by Mr. Ward?

12 A. Yes, I don't know the details of those surveys.

13 MR. POST: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MR. WARD: Very briefly.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. WARD:

18 Q. So as we just saw, Apple knows how to run a survey that
19 says select three reasons -- up to three reasons, correct?

20 A. Apparently, that's what they did.

21 Q. Anything that would stop them from running a survey that
22 said select one reason?

23 A. Nothing.

24 MR. WARD: Nothing further.

25 THE COURT: Further cross?

1 MR. POST: No further cross, Your Honor.

2 THE COURT: All right. You may step down, Dr.

3 Wecker.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Ladies and Gentlemen, before we proceed
6 with the Plaintiffs' next witness, we're going to take
7 another short recess. You may leave your notebooks in your
8 chairs. This, too, will be about 10 minutes.

9 Don't discuss the case among yourselves, follow my
10 other instructions, and we'll be back in here shortly to
11 continue with the next witness. You're excused for recess at
12 this time.

13 COURT SECURITY OFFICER: All rise.

14 (Jury out.)

15 THE COURT: The Court stands in recess for
16 approximately 10 minutes.

17 (Recess.)

18 (Jury out.)

19 COURT SECURITY OFFICER: All rise.

20 THE COURT: Be seated, please.

21 MR. CASSADY: Your Honor, if I may. We have a
22 small thing to bring up before the jury comes in, if you
23 would please allow.

24 THE COURT: What have you got, Counsel?

25 MR. CASSADY: Your Honor --

1 THE COURT: Let's go from the podium.

2 MR. CASSADY: Your Honor, my understanding is, with
3 regards to the criticism of Dr. Wecker running a survey for
4 motivate and then running a survey for alone motivate, that
5 the door had been opened to ask the following question: And
6 I heard Apple's counsel criticize just now Dr. Wecker for
7 running a survey with motivate and alone motivate and say --
8 and Dr. Mills will say -- I imagine he'd say yes.

9 And then I'd say: Do you know why he did that?

10 And I imagine Mr. Mills would say: Because counsel
11 for Apple criticized our use of that survey, and so that's
12 why we ran it.

13 That's it. Nothing more.

14 THE COURT: My understanding was that question was
15 going to be posed to Dr. Wecker. That was my understanding
16 from the bench conference.

17 Mr. Ward?

18 MR. WARD: I was going to, but I was fearful that
19 he might get into the issues of how --

20 THE COURT: And that's why you went to him at the
21 witness stand, and I assume you two huddled up with him,
22 which I didn't expect to happen at the witness stand; I
23 expected it to happen from the podium.

24 MR. WARD: Well, I wanted to --

25 THE COURT: So I assumed, once you had talked to

1 him at the witness stand, you decided not to go there.

2 MR. WARD: He said he wanted an example, and
3 that's --

4 THE COURT: Well, Dr. Wecker's off the stand now.

5 MR. WARD: Right.

6 THE COURT: And I didn't give consent to talk to
7 Dr. Mills -- Mr. Mills about it.

8 MR. WARD: Okay.

9 THE COURT: I'll carry your request if and when you
10 put on a rebuttal case, and we'll talk about it before then,
11 but we're going to move forward now. All right?

12 MR. CASSADY: Thank you, Your Honor. I just wanted
13 to ask for that very reason. I appreciate it.

14 THE COURT: All right. Let's bring in the jury.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Jury in.)

17 THE COURT: Please be seated.

18 All right. Plaintiff, call your next witness.

19 MR. CASSADY: Your Honor, the Plaintiffs call
20 Mr. Robert Mills.

21 THE COURT: All right. Mr. Mills, if you'll come
22 forward and be sworn.

23 MR. CASSADY: Your Honor, while he's doing that,
24 can I go ahead and pass the binders for his testimony?

25 THE COURT: Yes. You have leave to distribute your

1 binders.

2 MR. CASSADY: Thank you, Your Honor.

3 (Witness sworn.)

4 THE COURT: And, Mr. Mills, before we start the
5 questioning, if for any reason I should send the jury out or
6 you otherwise are asked to stand for the Court, be mindful of
7 the microphone. The last several times there's been a loud
8 boom every time everybody stood up because the witness has
9 bumped the microphone.

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Just be mindful of its placement.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Thank you.

14 All right. Counsel, you may proceed.

15 MR. CASSADY: Thank you, Your Honor.

16 ROBERT MILLS, PLAINTIFFS' WITNESS, SWORN

17 DIRECT EXAMINATION

18 BY MR. CASSADY:

19 Q. Sir, can you please introduce yourself to the jury?

20 A. Hello. My name is Robert Mills.

21 Q. And can you please tell the jury a little bit about
22 yourself.

23 A. Yes. I'm an economist. I grew up in the Pacific
24 Northwest, just west of Portland, Oregon. I now reside in
25 the Los Angeles area with my wife and two children. I work

1 for a firm called Micronomics in Los Angeles.

2 Q. And why are you here today?

3 A. I'm here to testify about damages due to the
4 infringement.

5 Q. And were you here yesterday during Mr. Racz's testimony?

6 A. Yes, sir.

7 Q. Okay. I believe there was a Mr. Mills referred to in
8 various number of documents yesterday. Are you related to
9 that Mr. Mills at all?

10 A. No, sir.

11 Q. Okay. Now, have you actually reached an opinion
12 regarding the damages in this case?

13 A. I have, yes.

14 Q. Okay. So before we get into the details of that, I just
15 want to ask this question: Can you please tell the jury how
16 much you determined that Apple owes Smartflash due to its
17 infringement of the patents in this case?

18 A. Well, I've concluded that Smartflash should receive no
19 less than a reasonable royalty, and I calculate that royalty
20 at \$852.2 million.

21 Q. Mr. Mills, what is it that enables you to come up with a
22 figure like that?

23 A. Well, as I mentioned, I'm an economist. I'm trained as
24 an economist. I've been involved in economic research and
25 consulting for more than 18 years now, and that includes the

1 valuation of intellectual property and the calculation of
2 economic damages.

3 Q. And did you help prepare slides or did you prepare
4 slides to help the jury with your testimony today?

5 A. Yes, sir.

6 Q. Okay. And this is an example of one of those slides?

7 A. It is, yes.

8 Q. Okay. So with this slide up, could you help me and the
9 jury with your educational background.

10 A. Yes.

11 So as I mentioned, I -- I grew up in the Pacific
12 Northwest, the Portland, Oregon, area. And I went to -- to
13 college at Portland State University, where I obtained a
14 Bachelor's degree in economics and history, and then
15 continued on there and received a Master's of Science degree
16 in Applied Economics.

17 And then after leaving Portland State University, I went
18 to the University of California in Santa Barbara where I
19 obtained a Master's of Arts degree in economic.

20 Q. And what did you do after graduating?

21 A. After graduating, I joined a firm in Portland, Oregon,
22 for a couple of years and then ultimately moved to Los
23 Angeles and joined Micronomics.

24 Q. I was looking at your slide when you were answering the
25 question, and I noticed that you have two economic degrees.

1 Is that true?

2 A. It is, yes.

3 Q. Why do you have two master's degrees in economics?

4 A. Well, the first degree is an applied degree, and that's
5 a program that's at Portland State University, where it deals
6 more with real-world problems, the application of economics
7 to real-world problems.

8 The second degree is more of a theory degree.

9 Q. Okay. And you currently work at Micronomics?

10 A. Correct.

11 Q. What do you do at Micronomics?

12 A. Well, I consult with clients on matters related to
13 economics. Much of that is in the area of patents.

14 Q. And what do you do with regards to patents?

15 A. Well, I assist clients in understanding the value of
16 patents. Sometimes that involves looking at portfolios or
17 groups of patents and then trying to determine the value of
18 those patents or which patents in that portfolio have value.

19 At other times, I'm asked to help with licensing
20 negotiations, how much somebody should pay for a license or
21 how much they should receive for a license. And then
22 sometimes I'm asked to come into court and testify about
23 damages in cases like this.

24 Q. Do you always work for the owner of the patents, like
25 Smartflash, or do you sometimes work for accused infringers

1 or infringers like Apple?

2 A. It's a mix.

3 Q. Could you please identify maybe a few example companies
4 you've worked for, maybe ones the jury would know?

5 A. Certainly.

6 So I've done work in the intellectual property area for
7 companies like Ericsson and Hyundai and Boeing. And I've
8 also worked for Regal Theaters and the estate of Marilyn
9 Monroe.

10 Q. Did you say Marilyn Monroe?

11 A. I did, yes.

12 Q. Okay. We'll come back to that.

13 Could you -- could you tell the jury whether you have
14 previously testified in cases like this about patent damages?

15 A. I have, yes. I've testified in deposition or trial more
16 than 30 times in a patent case.

17 Q. Okay. And are you being paid or compensated for the
18 work you've done in this case?

19 A. Micronomics, the firm that I work for, charges for my
20 time and the time of my staff, yes.

21 Q. Okay. And you've been here today during the testimony
22 of Dr. Jones and Dr. Wecker, right?

23 A. Yes, sir.

24 Q. Okay. And you heard some of the insinuations about
25 being paid for their time that Apple's counsel made of those

1 experts.

2 Do you remember that?

3 A. I remember questions about them being paid, yes.

4 Q. Okay. It's routine for expert witnesses to be
5 compensated for their time, right?

6 A. Absolutely, yes.

7 Q. Okay. And expert witnesses are different than fact
8 witnesses, right?

9 A. Yes, they are.

10 Q. Okay. Now, back to Marilyn Monroe. Tell me about that.

11 A. Well, the estate of Marilyn Monroe was involved in a
12 dispute with a number of photographers that had photographed
13 her, Ms. Monroe, when she was alive; and they were using her
14 name and likeness and her image to market various products.
15 And so the estate was involved in a dispute with those
16 photographers, and I was asked to help assess the value of
17 her name and likeness.

18 MR. CASSADY: Your Honor, Smartflash offers Mr.
19 Mills as an expert in economic analysis, intellectual
20 property analysis, and patent damages analysis.

21 THE COURT: Is there objection?

22 MR. BATCHELDER: No objection, Your Honor.

23 THE COURT: The Court will accept him as an expert
24 in those fields.

25 Let's proceed.

1 MR. CASSADY: Thank you, Your Honor.

2 Q. (By Mr. Cassady) Mr. Mills, can you please describe the
3 work you did for this case?

4 A. Yes. My staff and -- and myself, we reviewed a large
5 number of documents. And I think I prepared a slide that
6 shows some examples, but we reviewed tens of thousands of
7 pages of documents that were provided by Apple and by
8 Smartflash.

9 And this would include things like surveys -- we've seen
10 some examples of that -- financial documents, business
11 records, emails, those kinds of documents.

12 And then I also reviewed the sworn testimony of more
13 than a dozen witnesses.

14 And then also we obtained our own independent research,
15 books and articles, trade press, analyst reports, items like
16 that. And we've reviewed all that information.

17 Q. Okay. And I see on the list that you had some
18 conversations or interviews with some individuals; is that
19 right?

20 A. It is, yes.

21 Q. And who did you have interviews with?

22 A. Well, in addition to reviewing the sworn testimony, I --
23 I spoke with Mr. Racz, and I spoke with Dr. Wecker and Dr.
24 Jones.

25 Q. The -- the Dr. Wecker and Dr. Jones that have testified

1 in this case?

2 A. Correct, yes.

3 Q. And Mr. Racz, the inventor?

4 A. Yes, sir.

5 Q. Okay. Mr. Mills, how do you go about determining what
6 constitutes or -- or what makes up damages in a case like
7 this?

8 A. Well, I start with the -- the patent statute that
9 addresses damages for patent infringement cases. It's called
10 Section 284.

11 Q. And is this that statute?

12 A. It is. This is -- this is a part of the statute, yes.

13 Q. Okay. And how do you go about determining what
14 compensates -- fair compensation?

15 A. Well, according to the statute -- and I think we heard
16 this earlier in the instructions, but according to the
17 statute, upon finding for the claimant, the Court shall award
18 the claimant damages adequate to compensate for the
19 infringement, but in no event less than a reasonable royalty
20 for the use made of the invention by the infringer.

21 Q. Okay. And in this situation, who would be the
22 infringer?

23 A. Apple is the one that is alleged to infringe here, yes.

24 Q. Okay. And when you calculate a reasonable royalty for
25 patent infringement, what are you trying to determine?

1 A. Well, we're trying to determine what a license would
2 look like between the parties if they had a license.

3 Q. And -- and what is a license?

4 A. A license is an agreement to let somebody else use your
5 property rights.

6 Q. Can you give me some examples?

7 A. Yes. So common examples would be licenses in the oil
8 and gas industry, so licenses to oil and gas rights, licenses
9 to music rights, and then licenses to patent rights. Those
10 are very common as well.

11 Q. And, Mr. Mills, could you explain why licenses are
12 necessary in the first place?

13 A. Well, in the -- in the context of patents, a patent
14 owner has the right to exclude others from using its
15 property. And it also has the option to -- to grant rights
16 to others to use its property.

17 And so a license is -- is a means of providing those
18 rights. The patent owner can set a price for its technology
19 and offer licenses to third parties.

20 Q. And so I heard you say price. Does that mean that
21 licenses include payment terms?

22 A. Generally, they include payment -- payment terms that
23 are called royalties, yes.

24 Q. Okay. And how do royalties work?

25 A. Well, there can be many different forms of royalties.

1 There can be a one-time payment, for example. There can be
2 payments that are made over time, like installments.

3 And also commonly, there are what are called running
4 royalties, which are royalties that are paid based on use.

5 And use can be metered either by the number of sales
6 that are made or the amount of revenue that's generated. But
7 they would be tied somehow to -- somehow to the amount of use
8 that's made of the technology.

9 Q. And how do licenses come into existence?

10 A. Parties negotiate them.

11 Q. And a license between Smartflash and Apple doesn't exist
12 in this case, right?

13 A. It does not.

14 Q. Okay. So what do we do?

15 A. So when a license doesn't exist, I use something called
16 the hypothetical negotiation framework.

17 Q. And can you tell me about that? What's that?

18 A. Yeah. The hypothetical negotiation framework asks us to
19 imagine what would happen if the parties in dispute had
20 actually negotiated a license at the time that the
21 infringement began, rather than infringing.

22 Q. And in this case, when would that negotiation have taken
23 place?

24 A. It would have taken place in about June of 2009, because
25 that's when the infringement here is -- began.

1 Q. And who would have been involved in that negotiation?

2 A. Well, Apple would be on one side of the negotiating
3 table, and Mr. Racz, acting on behalf of Smartflash would be
4 on the other.

5 Q. Are there certain assumptions made in this negotiation?

6 A. There are, yes. There are some key assumptions.

7 Q. And what are those assumptions?

8 A. Well, the first two have to do with validity and
9 infringement. And at the hypothetical negotiation, we're
10 asked to assume that -- that Apple would admit that it
11 infringes the patents and would admit that the patents are
12 valid, even though we've heard that that's being denied here.
13 For the hypothetical negotiation framework, we're asked to
14 assume that they would admit that. And that's different from
15 a real-world negotiation, because it resolves all that
16 uncertainty in favor of the patent owner, which would improve
17 its bargaining position.

18 Q. Okay. Are there -- are there other assumptions in the
19 negotiation?

20 A. Yes. The third bullet point here is that the parties
21 are willing to negotiate. And what this means is that --
22 that both Apple -- we presume that both Apple and Smartflash
23 would be willing to actually negotiate a license, sit down
24 and negotiate until they reach an agreement.

25 Q. Okay. And then what's the final assumption you have

1 here on the slide?

2 A. So the final assumption is that the parties have access
3 to all of the relevant information. And this can include
4 information that may not have even been known at the time of
5 the negotiation, so it could be subsequent information.

6 But, basically, it means that the cards are dealt face
7 up. And this is very different from a real-world negotiation
8 where parties typically wouldn't share confidential
9 information with their counterpart, wouldn't pass that across
10 the table.

11 But in the hypothetical negotiation framework, we assume
12 that both parties would have access to all of the relevant
13 information.

14 Q. Okay. So in a negotiation that you're reviewing here,
15 Apple doesn't get to say the patents are invalid, right?

16 A. That's correct.

17 Q. And unlike in this litigation, Apple doesn't get to say
18 the patents aren't infringed.

19 A. That's correct.

20 Q. Apple can't just walk away from the table and say they
21 don't want to negotiate.

22 A. Correct.

23 Q. And -- and Apple and Smartflash both have, you know,
24 cards up. They all see each other's cards, right?

25 A. Also correct, yes.

1 Q. Okay. So they can both tell maybe what the other person
2 may be willing to pay or willing to sell or other various
3 pieces of information?

4 A. Yeah. Any relevant information would be known.

5 Q. Okay. What products are covered in -- in this case by
6 this negotiation?

7 A. Well, as we heard Dr. Jones testify earlier, this
8 involves the iPhone, the iPad, and the iPod Touch.

9 And it's my understanding that this case involves the
10 iPhone up through the 5S model, the iPad up through the iPad
11 Air and the iPad Mini 2 models, and then all of the models of
12 the iPod Touch.

13 And then the relevant period for purposes of damages is
14 June 2009 when the infringement began up through -- through
15 the time of trial.

16 Q. What about the devices that were sold by Apple prior to
17 June 2009?

18 A. Well, it's my understanding that those devices can be
19 upgraded and are often upgraded to be used with the
20 infringing features, but they have not been included in my
21 damages calculations.

22 Q. Okay. So to be clear, the upgrade in 2009, would those
23 products be infringing?

24 A. That's my understanding, yes, if they're using the
25 functionality.

1 Q. Okay. But you haven't included those here in your
2 analysis in this case?

3 A. I have not.

4 Q. Now, we talked about the assumptions. Is there anything
5 else that goes into this negotiation?

6 A. Yes. There is, yes.

7 Q. Okay. And -- and what else do you have to do in
8 analyzing this negotiation?

9 A. Well, I consider something called the Georgia-Pacific
10 factors.

11 Q. And are these those factors?

12 A. Yes, this is a -- sort of a summary of the factors,
13 yeah. There are 15 factors, and -- and they're summarized
14 here. They're actually longer if you look at the full text.

15 Q. Okay. And -- and I'll start with this slide. Why is it
16 called Georgia-Pacific, and what is that we're seeing on the
17 far left of your slide?

18 A. So Georgia-Pacific is a famous patent case, and these
19 factors come from that case. And the factors on the right --
20 the 15 items on the right are factors that we analyzed to
21 determine what the outcome of this hypothetical negotiation
22 would be.

23 Q. And did you consider all of these factors in your
24 analysis in this case?

25 A. Yes, sir, I did.

1 Q. Okay. Are all the Georgia-Pacific factors always
2 relevant?

3 A. Not necessarily. Depends on the facts of the case.

4 Q. Okay. Are you prepared to testify about these factors
5 today?

6 A. Yes, sir.

7 Q. Did you prepare some slides kind of organizing how you
8 wanted to approach this analysis?

9 A. I did, yes.

10 Q. And where do you want to start this Georgia-Pacific
11 analysis?

12 A. I think it makes sense to start with -- I've grouped
13 three factors together, Georgia-Pacific 1, 2, and 12. And
14 these factors relate to licenses that involve the parties and
15 the industry -- industry licenses, as well as the licensing
16 policies of the parties.

17 Q. Were there any licenses comparable to this negotiation
18 in this case?

19 A. Well, I've reviewed a number of licenses in this case,
20 but I didn't find any to be directly comparable.

21 Q. Okay. Were there any Apple licenses that you reviewed
22 in this case?

23 A. Yes, I did.

24 Q. Okay. Do the Apple licenses provide any contribution to
25 your analysis in this case?

1 A. Yes. As I said, I didn't find any directly comparable,
2 but they do tell me that Apple has been willing to enter into
3 licenses with others; and that it's been willing to do so on
4 different terms. Sometimes it pays lump-sum royalties, and
5 sometimes it pays running royalties.

6 Q. Okay. And what else did you consider under the
7 licensing factors you have up here right now?

8 A. I also considered the Chalfont licensing strategy.

9 Q. Okay. And what is Chalfont?

10 A. Chalfont, as we heard Mr. Racz testify, was a company
11 that was established in 1999. And it's my understanding that
12 it was established in part to license the technology of
13 Smartflash.

14 Q. And did Chalfont have a licensing strategy?

15 A. Yes, sir, it did.

16 Q. Okay. Is that the one Mr. Racz talked about yesterday?

17 A. Yes.

18 Q. Okay. And is -- is this that policy?

19 A. Yeah. This is a summary of the policy, yes.

20 Q. Okay. And -- and what was the policy as shown here on
21 the board?

22 A. Well, the -- the policy or the strategy, rather, was
23 really to try to license device manufacturers and content
24 providers, and the strategy involved some target royalty
25 rates that were established back in 2001. And they were \$4

1 for player devices and 10 cents per digital content card.

2 Q. And what did you conclude from -- from this strategy?

3 A. Well, it tells me something about how Smartflash -- or
4 Smartflash viewed the value of its technology at that point
5 in time, but it also tells me something about the type of
6 license structure that Smartflash would find acceptable; that
7 being a running royalty structure as opposed to a one-time
8 payment.

9 Q. Now, Mr. Mills, you were here during the
10 cross-examination of Dr. Racz, right?

11 A. Yes, sir.

12 Q. Do you remember the documents that were shown to Mr.
13 Racz that made various statements about the value of the
14 investment in Smartflash or various technologies?

15 A. I remember some of that, yes.

16 Q. Okay. Were any of those documents showing values --
17 were any of those made after the '772 patent and the '221
18 patents that are part of this case?

19 A. I don't believe so, no. Those patents issued in 2012,
20 and I think all of the documents that we saw were predated
21 that time period.

22 Q. Okay. So to your recollection, was Dr. -- sorry, was
23 Mr. Racz ever shown a document that valued the '772 and the
24 '221 patents?

25 A. Not that I can recall.

1 Q. Okay. Thank you.

2 In addition to the Chalfont business plan, what else
3 have you looked at?

4 A. Well, I looked at -- I mean, it depends on what --
5 what -- for what purpose. I mean, I've looked at a lot of
6 information. If we're moving on to -- to the benefits and
7 advantages, then I've looked at a lot of internal Apple
8 documents, for example.

9 Q. Okay. And what is benefits and advantages?

10 A. So these are Georgia-Pacific Factors No. 9 and 10, and
11 they relate to the benefits and advantages of the -- of the
12 patent.

13 Q. And is the Smartflash invention beneficial to Apple?

14 A. Yes, sir, it is.

15 Q. Okay. Now, Mr. Mills, were you here -- I think you
16 already said yes to this -- to Mr. -- Mr. Batchelder's cross
17 of Mr. Racz regarding the number of features that an Apple
18 device has?

19 A. Yes, I recall that.

20 Q. Okay. So can you help me understand how a device like
21 an iPhone, and I don't have one on me -- how a device like an
22 iPhone that has lots of hardware and other implementation
23 features, just like Mr. Batchelder said, how a feature like
24 Mr. Racz's can be important to that?

25 A. Yes. Well, hardware is certainly important, but -- but

1 Apple has long recognized that software creates the largest
2 portion of the value of its products, including applications
3 and content.

4 Q. Okay. And is this one of those pieces of evidence
5 you're referring to?

6 A. Yes. This is a -- an Apple executive presentation from
7 2010. And if you look at the first bullet point, it says:
8 Software creates the largest share of product value.

9 Q. And what does that tell you about the analysis here?

10 MR. CASSADY: Strike that.

11 Q. (By Mr. Cassady) Let me ask a different question.

12 So what are the two software functionalities that are
13 discussed in this case so far?

14 A. Well, we spent quite a bit of time talking about the App
15 Store and the iTunes Store.

16 Q. Okay. And -- and are those services or software like
17 described here on this sheet?

18 A. Yes, sir.

19 Q. Okay. Are there particular types of content in those
20 stores that infringe? I think Dr. Jones listed them, but if
21 you could just one more time.

22 A. Yes, I heard Dr. Jones earlier today speak about
23 applications from the App Store, video, which would include
24 movies and TV, books, and music.

25 Q. So we know Apple believes software related features

1 create the largest product value, but how do we know that the
2 features we're talking about in this case are important?

3 A. Well, there are other internal Apple documents that --
4 that demonstrate that.

5 Q. Okay. Do you have some examples for us?

6 A. I do. I've put together some examples.

7 Q. Is this one of them?

8 A. It is, yes. This is an iTunes marketing plan from 2004,
9 and so this is a pretty early-on document. And so the goal
10 was to create a profitable online music business for the
11 company, but it also was to drive iPod sales and usage.

12 Q. Can you please explain -- I mean, what does that mean
13 when it says drive iPod sales and usage?

14 A. Well, by -- by developing a -- an online music business,
15 the hope was to further the hardware sales.

16 Q. And this one here is PX 59, correct?

17 A. Yes, PX 59.

18 Q. Okay. And, Mr. Mills, at various times during this
19 case, people have referred to PX or DX numbers, right?

20 A. Yes.

21 Q. Okay. And is it your understanding that the jury, if
22 they wanted to, could ask for those numbers in their
23 deliberations so they could look at those documents?

24 A. That's my understanding, yes.

25 Q. Okay. Do you have any other examples besides PX 59?

1 A. Yes, I do. So this is a -- an analysis of iTunes'
2 impact on iPod and Mac purchases, and this is from 2007. And
3 if you look at the -- the call-outs from the document, you'll
4 see that Apple found that the presence of an iTunes Store
5 account made customers significantly more likely to buy an
6 iPod.

7 And the same was true with video iPods.

8 Q. Okay. And this is just an excerpt from a larger
9 document, right?

10 A. It is, yes.

11 Q. Okay. Just like the one before it was, correct?

12 A. Correct.

13 Q. Okay. Does Apple run any internal surveys or studies?
14 And I think we know the answer to that already, but go ahead.

15 A. Yes, sir, it does.

16 Q. Okay. So what kind of information does Apple ask
17 about --

18 MR. BATCHELDER: Your Honor, may we approach?

19 THE COURT: You may approach.

20 (Bench conference.)

21 MR. BATCHELDER: I'm concerned we're getting into
22 subject matter that may require the courtroom to be sealed.

23 MR. CASSADY: You could have just asked that. Yes,
24 we're about to pull up surveys. I was about to tell you
25 that. I didn't know that was the issue. I apologize. So

1 we'll seal the courtroom, Your Honor.

2 THE COURT: You'll ask me to seal the courtroom.

3 MR. CASSADY: I mean, yes, Your Honor, of course.

4 THE COURT: Another thing, if you're going to tell
5 the witness the answer, don't ask the question. You've done
6 that three times.

7 MR. CASSADY: Okay.

8 THE COURT: All right. Let's just ask from the
9 podium, and we'll proceed to seal it as soon as you ask.

10 MR. BATCHELDER: Thank you, sir.

11 (Bench conference concluded.)

12 THE COURT: All right. Let's proceed.

13 MR. CASSADY: I believe counsel for Apple had --
14 counsel for Apple wanted to seal the courtroom?

15 MR. BATCHELDER: Yes, Your Honor, if we could.

16 THE COURT: Is there objection?

17 MR. CASSADY: No objection, Your Honor. I would
18 just ask -- these are business documents, so I would assume
19 that Mr. Racz could stay for this portion of the testimony,
20 but obviously, that's up to Apple. I'm just putting the
21 question --

22 THE COURT: Mr. Batchelder?

23 MR. BATCHELDER: No objection.

24 THE COURT: All right. At counsel's request, the
25 Court will order the courtroom sealed. All persons present

1 not subject to the current protective order in this case,
2 except Plaintiffs' corporate representative, should excuse
3 themselves from the courtroom and remain outside until the
4 courtroom is unsealed.

5 (Courtroom sealed.)

6 (This portion of the transcript is Sealed and
7 filed as Sealed Portion No. 3.)

8 (Courtroom unsealed.)

9 THE COURT: Ms. Mayes, please let those people
10 outside know they may return.

11 COURT SECURITY OFFICER: Yes, sir.

12 MR. CASSADY: Your Honor, would you prefer I wait?

13 THE COURT: Yes, I do. I'll tell you when to
14 proceed, Counsel.

15 MR. CASSADY: Thank you, Your Honor.

16 THE COURT: Approach the bench, please, Counsel.

17 (Bench conference.)

18 THE COURT: How much longer do you expect your
19 direct to be?

20 MR. CASSADY: I think I've got about 10 more
21 minutes, if I've got it right.

22 THE COURT: And I assume you have lengthy cross
23 coming?

24 MR. BATCHELDER: Yes, I do.

25 THE COURT: You're going to need to show a little

1 more respect for this Court. I am getting a very strong
2 message that you're off to the races regardless of what I may
3 or may not say. If I continue to feel that way, you and I
4 are going to have a problem.

5 You understand me, Mr. Cassady?

6 MR. CASSADY: I understand, Your Honor, and I
7 apologize.

8 THE COURT: I expect to see a little more deference
9 shown to the Court, like your co-counsel have.

10 MR. CASSADY: I understand, Your Honor.

11 THE COURT: All right. Let's proceed with the
12 remainder of the direct.

13 (Bench conference concluded.)

14 THE COURT: All right. Proceed with the remainder
15 of your direct examination.

16 MR. CASSADY: Thank you, Your Honor.

17 Q. (By Mr. Cassady) Now, you've calculated the at-risk
18 profit, correct?

19 A. Yes, sir.

20 Q. Okay. What do we do next in your analysis?

21 A. Well, I used that calculation to determine a royalty
22 rate -- well, actually I used it to determine royalty rates
23 for each of the devices types.

24 Q. And how do you do that?

25 A. Well, this -- this provides a summary of how I do that.

1 This is, again, just a particular period of time. It's --
2 it's for the iPhone and the App Store from December 25th,
3 2012, through February 20th, 2015. And the at-risk profit is
4 \$309 million, if you look in Column 1. The total units are
5 49 million during that period.

6 Q. Now, Mr. Mills, you've got the at-risk profit and the
7 total units. What do you do with those numbers?

8 A. So I divide Column -- Column 1, which is actually
9 labeled Column 3, by -- by the second column, and that gives
10 us the at-risk profit per unit, which is \$6.24 per unit. And
11 then I compared that to the revenue per unit, which is \$455,
12 and that gives us a royalty rate. If I divide the at-risk
13 profit by the revenue per unit, that gives us a royalty rate.
14 And in this -- for this particular time period, it's 1.4
15 percent.

16 And I -- I just noticed, I think, that this slide is
17 actually mislabeled. It should be the iPad App Store
18 scenario, not iPhone.

19 Q. Oh, thank you, Mr. Mills. Is the PX number on the
20 bottom left, is that the number for the full analysis you've
21 done under this?

22 A. Yes, sir, it is.

23 Q. Okay. And that's PX 203.002?

24 A. Yes, sir.

25 Q. Okay. So what is the resulting royalty rate for all the

1 products across the time period?

2 A. For the iPhone, it's 2.5 percent; for the iPad, it's .9
3 percent; and for the iPod Touch, it's 0.4 percent.

4 Q. Why are the royalty rates different for the products in
5 this case?

6 A. Well, as I explained, I'm taking profit margins into
7 account, and the profit margins for these products are
8 different. Also, Dr. Wecker's surveys indicate that these
9 features are -- are more important for certain devices, and
10 so the royalty rates reflect that.

11 Q. Okay. So we have a -- a royalty base and a royalty
12 rate. What do we do with those?

13 A. So we multiply the royalty rate times the royalty base
14 to determine royalties.

15 Q. And what's the outcome of that?

16 A. So if we look at the first row for the iPhone, the
17 royalty base there is 29.7 billion, and the royalty rate is
18 2.5 percent. And so if you multiply the rate times the base,
19 that is 741.6 million.

20 And I've done the same thing for the iPad and the iPod
21 Touch, and when you add those together, it is \$852.2 million.

22 Q. And is that the damages asked that we were discussing
23 earlier today?

24 A. That's my estimate of reasonable royalty damages, yes.

25 Q. And is this the only analysis you did in this case

1 regarding damages?

2 A. No, I did a second analysis, as well.

3 Q. And what analysis was that?

4 A. It's -- it's similar to the first analysis, but instead
5 of using Dr. Wecker's survey results about alone motivate, I
6 used the valuation survey results.

7 Q. Okay. And how did you go about analyzing the value
8 attributed to the feature?

9 A. Well, I -- I looked at Dr. Wecker's survey results and
10 made some estimates of the value -- the percentage of the
11 product value attributable to the features and then used that
12 to determine unapportioned royalty base.

13 Q. Okay. And this is -- is this an example of that
14 analysis?

15 A. Yes. This shows an estimate of 16.4 percent for the
16 iPhone movie/TV functionality.

17 Q. Okay. Now, is -- is this an answer from everybody in
18 the survey?

19 A. No. This is an estimate that I prepared based on the
20 answers to the -- that I have from the survey.

21 Q. And why was an estimate necessary?

22 A. Because certain participants in the survey weren't asked
23 this question. So certain par -- participants in the survey
24 don't use the functionality, and so they weren't asked how
25 much they value it.

1 And for those participants, I just assumed they have
2 no -- they place no value on it, so it's a zero for them.

3 And then others that are alone motivated to purchase
4 based on the functionality, they -- they were not asked the
5 question either. And so I've estimated the value for those
6 individuals by looking at the people that were not alone
7 motivated, and particularly looking at the upper half of
8 those responses and using that average.

9 Q. And is your an analysis contained in PX 223?

10 A. It is, yes.

11 Q. Okay. What was the resulting royalty base using this
12 analysis?

13 A. The royalty base using this analysis is lower than the
14 prior one, but it's still significant, \$41.1 billion.

15 Q. Now, you had this royalty base. How does this analysis
16 differ from your prior analysis beyond this step?

17 A. Well, beyond this step, it's -- it's the same
18 calculation. We apply the royalty rate to the royalty base.

19 Q. And what's the resulting damages using your second
20 analysis?

21 A. Multiplying the rates times the bases for each of the
22 three devices and then adding them together, yields \$802.8
23 million.

24 Q. Now, have you compared the two damages asked from your
25 two analyses?

1 A. I've compared the results, yes.

2 Q. And what have you determined about your analysis based
3 on the comparison between your two?

4 A. Well, the alternative analysis, based on the valuation
5 questions, it produces a lower damages estimate, but it's on
6 a similar scale as -- as the first estimate. And what this
7 tells me is that we get similar results whether we look at
8 the motivation question, the alone motivate question, or we
9 look at the valuation question. They -- they both produce
10 similar results, and that gets me some comfort in the -- the
11 reasonableness of the result.

12 Q. And is your an analysis contained in PX 203.006 and
13 PX 228?

14 A. It is, yes.

15 Q. Okay. Let me ask you one more question about Mr. Racz's
16 testimony. He talked about the Chalfont document, and you
17 did too, as well, right?

18 A. Yes, sir.

19 Q. Okay. And they -- what was the royalty rate per unit in
20 that analysis?

21 A. Well, for devices, it was \$4, and for content cards it
22 was 10 cents.

23 Q. Okay. And I'm not asking you to run the number right
24 here in your head, but I want to know is the number that
25 Chalfont royalty rate would have asked for in this case

1 higher or lower than the number that you have here on the
2 screen?

3 A. Well, if we were just strictly applying that -- that
4 strategy -- the target rates to devices, it would be much
5 higher.

6 Q. Okay. Now, did you prepare a slide that summarizes the
7 various exhibits that you used during your analysis?

8 A. Yes, sir.

9 Q. Okay. Is this -- is this that slide?

10 A. It is, yes.

11 Q. Okay.

12 MR. CASSADY: Your Honor, rather than reading these
13 numbers into the record, if the Court would permit, I would
14 just note that these are documents that were used with Mr.
15 Mills.

16 THE COURT: Is there any objection from the
17 Defendant?

18 MR. BATCHELDER: No, sir.

19 THE COURT: It's your call, Counsel. We'll accept
20 that, or you may read them into the record orally. It's your
21 decision.

22 MR. CASSADY: Thank you, Your Honor, I appreciate
23 that. To save the jury some time, we'll go ahead and leave
24 it at that.

25 Q. (By Mr. Cassady) So just one more time, Mr. Mills, can

1 you please tell the jury what your analysis of the reasonable
2 royalty is, based on Apple's infringement?

3 A. Yeah. My conclusion is that the damages are \$852
4 million.

5 Q. Thank you, Mr. Mills.

6 MR. CASSADY: Your Honor, I pass the witness.

7 THE COURT: All right. Ladies and Gentlemen, this
8 looks like a good juncture to recess for the day. We will
9 reconvene in the morning and begin with cross-examination of
10 the witness by the Defendant.

11 Please take your notebooks and leave them on the
12 table in the jury room as you leave the courthouse.

13 You know I'm going to say this, but I'm going to
14 say it anyway. Don't discuss the case with anyone, including
15 yourselves. Follow all my other instructions. We will try
16 to keep to the same time table. We were a little late
17 getting in this morning. We will do better, I promise you,
18 in the morning.

19 Try to be here assembled by 8:20 so that we can
20 start as close to 8:30 as possible. Travel safely. And
21 you're excused for the evening.

22 COURT SECURITY OFFICER: All rise for the jury.

23 (Jury out.)

24 THE COURT: Counsel, we stand in recess until
25 tomorrow morning. I will be in chambers at 7:30, if there's

1 anything that develops overnight that comes -- needs to come
2 to my attention.

3 We stand in recess.

4 (Court adjourned.)

5

6 CERTIFICATION

7

8 I HEREBY CERTIFY that the foregoing is a true
9 and correct transcript from the stenographic notes of the
10 proceedings in the above-entitled matter to the best of our
11 abilities.

12

13

14 /s/_____
15 SHEA SLOAN, CSR, RPR
16 Official Court Reporter
17 State of Texas No.: 3081
18 Expiration Date: 12/31/16

February 17, 2015

17

18

19

20 /s/_____
21 SHELLY HOLMES, CSR, TCRR
22 Deputy Official Court Reporter
23 State of Texas No.: 7804
24 Expiration Date 12/31/16

23

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